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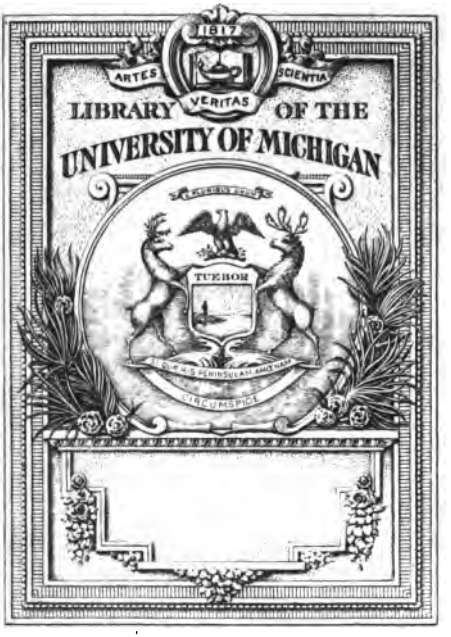
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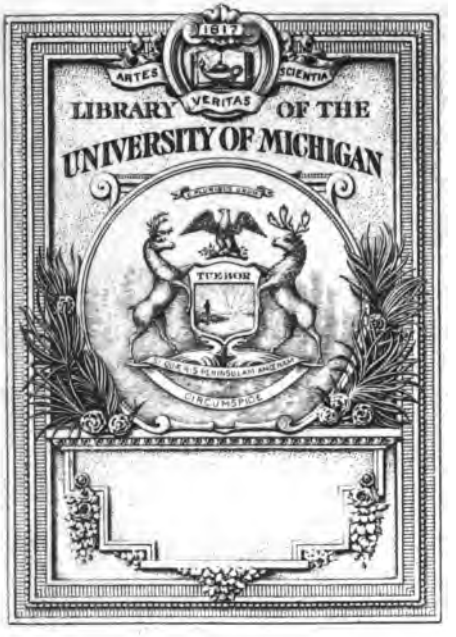
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Constitutional Conventions in Illinois

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PREFACE.

The Fiftieth General Assembly adopted a resolution favoring the assembling of a Constitutional Convention in this State. The question of assembling a Constitutional Convention to revise, alter or amend the Constitution of Illinois will be submitted to the voters at the general election to be held on the fifth day of November, 1918. This bulletin is prepared in the hope that it will be of assistance to the people, who, on November fifth of this year, must decide whether or not a convention shall be assembled. A detailed treatment of all questions relating to a convention is, of course, impossible. But, for the purpose of assisting the voter in determining whether he shall vote for or against the resolution adopted by the General Assembly in 1917, an attempt is here made to present, as briefly and concisely as possible, a discussion of the more important of such questions. This paper, however, is not intended as an argument for or against the assembling of a convention. Its only purpose is to discuss fairly and impartially the main issues raised by the adoption of the resolution for a Constitutional Convention.

This bulletin has been prepared by E. J. Verlie and Elliott Billman, under the direction of the Secretary of the Legislative Reference Bureau.

LEGISLATIVE REFERENCE BUREAU,
Springfield, Illinois.

April, 1918.

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CONSTITUTIONAL DEVELOPMENT IN ILLINOIS.

There have been four Constitutional Conventions in this State. The first was held under an act of Congress adopted on April 18, 1818. The second convention was held in 1847, the third in 1862 and the fourth in 1869–70. All of the conventions after 1818 were assembled for the purpose of altering, revising or amending the then existing Constitution. An attempt was made in 1824 to assemble a convention, but when the question of holding a convention was submitted to the people, it was voted upon in the negative. In 1842 and 1856 similar attempts were again defeated by the people.

CONSTITUTION OF 1818.

On April 18, 1818, Congress passed an act authorizing the assembling of a convention in the territory of Illinois for the purpose of forming a State Constitution and a State Government. Delegates to the convention were elected in pursuance of the act of Congress and assembled at Kaskaskia on August 3, 1818. The convention completed its labors on August 26, of the same year. Its work was not submitted to the people for ratification or rejection but the Constitution adopted by the convention became operative on December 3, 1818, by the admission of Illinois as the twenty-first State of the Union.

At the time of the convention the territory of Illinois had a population of less than 45,000 and the settled part of the State did not extend much farther north than Edwardsville, now the county seat of Madison County. The territory was divided into fifteen counties, namely: St. Clair, Randolph, Madison, Monroe, Gallatin, Johnson Edwards, White, Pope, Jackson, Crawford, Bond, Union, Washington and Franklin. The Congressional Enabling Act fixed the number of delegates to the convention and apportioned them among the several counties. The counties of St. Clair, Madison and Gallatin were each entitled to three delegates. Each of the remaining twelve counties elected two delegates.

The Constitution adopted by the convention was a rather brief document. Its main provisions were taken from the Constitutions of New York, Kentucky, Ohio and Indiana. Under its terms the powers of government were assigned to three distinct departments—the Legislative, the Executive and the Judicial—and, except as provided in that instrument, each department was made supreme in its own sphere.[1] Very little power, however, was granted to the Executive Department by the first Constitution. With the exception of the slavery question

[1] Constitution 1818, Article I, Sections 1 and 2.

this, perhaps, is the most interesting feature of the Constitution of 1818. Before the Revolution the governors of most of the colonies were appointed by the King of Great Britain. These royal governors had not always acted in the interest of the people and, in many instances, had refused to approve laws passed by the colonial legislatures. Governors thus came into disfavor and the legislatures were regarded as the guardians of the people's liberty. In framing the first State Constitutions it was deemed wise to curtail the powers of the governor and to enlarge the powers of the legislature. It never occured to our forefathers that there was a vast difference between a governor appointed by the King and a governor elected by the people. They never stopped to think that a governor who held his office at the will of the people would be apt to observe the interests of those who could work his political ruin. In their opinion, based on previous experience, governors were inclined to act arbitrarily and contrary to the wishes of the people. Thus developed the early policy of granting little power to the executive department of the government. Subsequently this policy was recognized as unwise. To-day the tendency is to enlarge the powers of the Executive Department. But governors were distrusted in the early years of our history and the fact that the Constitution of 1818 conferred but little power on the Executive Department is due to that feeling of distrust.

The framers of the first Constitution accomplished the overshadowing of the executive branch of the government in two ways: (1) By vesting extensive appointive powers in the Legislature,[2] and (2) by placing the veto power in the hands of a Council of Revision, composed of the Governor and the Supreme Court judges.[3] Under the Constitution of 1818 the Legislature was empowered to appoint judges of the Supreme Court and of the inferior courts, and "an auditor of public accounts, an attorney general, and such other officers for the State as may be necessary * * *" In establishing the Council of Revision with power to veto acts of the General Assembly the Convention of 1818 borrowed from the New York Constitution of 1777. New York abandoned this plan in 1821, but Illinois retained it until 1848.

In 1818 there was much agitation in the territory of Illinois concerning the slavery question. The people were divided into two factions, one favoring and the other opposing slavery. The Congressional Enabling Act expressly declared that any Constitution adopted should not be repugnant to the Ordinance of 1787.[4] Article VI of the Ordinance of 1787 is as follows:

> "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided, always,* that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."

Notwithstanding the provisions of the enabling act the slavery question was perhaps the most important question before the conven-

[2] Constitution 1818, Schedule, Section 10.
[3] Constitution 1818, Article III, Section 19.
[4] Act of Congress, April 18, 1818, Section 4

tion. The provisions relating to slavery which were finally incorporated into the Constitution were the result of a compromise between the opposing factions. Section 1 of Article VI of the new Constitution provided that "neither slavery or involuntary servitude shall be hereafter introduced in this State." Section 2 of the same article, subject to certain conditions, permitted "persons bound to labor in any other state" to "be hired to labor in this State" and section 3 recognized existing contracts or indentures binding persons to service.

It is apparent that with respect to slavery, the Constitution adopted by the First Constitutional Convention was not in complete accord with the Ordinance of 1787. On that ground Congress might well have refused to admit Illinois to the Union. Up to this time, however, there had been no serious attempt in Congress to make an issue of the slavery question, and despite the protests of certain members of Congress, Illinois was admitted as a state although its Constitution was inconsistent with the Ordinance of 1787. Between 1802 and 1818 Congress met the slavery problem by the alternate admission of free and slave states. In 1819 when Missouri made application for admission to the Union eleven of the twenty-two states of the nation were free while the remaining eleven states recognized slavery. But the impending storm that broke when Missouri sought admission as a state and resulted in the famous Missouri Compromise was plainly forecast when Representative Tallmadge of New York objected to the admission of Illinois on the ground that Article VI of the Constitution of 1818 was repugnant to the Ordinance of 1787.

The Consitution of 1818 made the following provision concerning the amendment thereof:

> "Whenever two-thirds of the General Assembly shall think it necessary to alter or amend this Constitution, they shall recommend to the electors, at the next election of members to the General Assembly, to vote for or against a convention; and if it shall appear that a majority of all the citizens of the State, voting for representatives, have voted for a convention, the General Assembly shall, at their next session, call a convention, to consist of as many members as there may be in the General Assembly, to be chosen in the same manner, at the same place, and by the same electors that choose the General Assembly, and which convention shall meet within three months after the said election, for the purpose of revising, altering or amending this Constitution."[5]

Only one method of amending the instrument was provided for. Both of the later Constitutions, in addition to the convention method of revising or amending such documents, authorized the General Assembly to propose constitutional amendments and to submit them to the voters for ratification or rejection. The first Constitution, however, could be amended only by assembling a constitutional convention for that purpose.

THE STRUGGLE IN 1824.

Although slavery was not completely abolished by the Constitution of 1818, Illinois was regarded as a free state. To that extent the anti-

[5] Constitution 1818, Article VII.

slavery forces had obtained a victory. But the struggle for and against slavery did not come to an end with the admission of Illinois as a state. Although the pro-slavery faction, in the face of the prohibition contained in the Ordinance of 1787, had obtained a compromise in the convention at Kaskaskia, it was not satisfied. Shortly after Illinois became a state the advocates of slavery began their efforts to amend the Constitution in accordance with their views. This precipitated a bitter struggle between the opposing factions which continued for several years and finally culminated in the defeat of the pro-slavery group in 1824. In 1823 the pro-slavery faction secured the adoption by "two-thirds of the General Assembly" of a resolution favoring the assembling of a convention to alter, revise or amend the Constitution. The question of calling a convention was to be submitted to the voters in 1824. A turbulent campaign followed in which the only issue was whether or not the existing Constitution should be amended so as to recognize the principle of slavery absolutely or more fully than it was recognized by Article VI of that instrument. Governor Coles, formerly a slave holder, was the leader of the anti-slavery party. The people, on August 2, 1824, voted against the calling of a convention and the pro-slavery faction was defeated.

CONSTITUTION OF 1848.

In 1842 a resolution of the General Assembly favoring the calling of a convention to amend the Constitution was submitted to the voters but was not ratified. A similar resolution, however, was approved by the people in 1846. Delegates to the convention, 162 in number, were elected at a special election in April, 1847, and assembled at Springfield on June 7, 1847. The convention adjourned August 31, 1847. The convention's work was submitted to the people at a special election held in March, 1848, and was ratified by a large majority. Two articles [6] were submitted separately and adopted. The new Constitution became operative on April 1, 1848.

The Constitution of 1848 was a much longer and more elaborate instrument than the preceding one. It contained many provisions not found in the Constitution of 1818, and some of the existing provisions which were deemed undesirable or the usefulness of which had been outgrown, were changed. It continued the Governor's term at four years, [7] fixed his salary at $1,500 per year, [8] and provided that he could not succeed himself. [9] It also abolished the Council of Revision created by the Constitution of 1818 and vested a qualified veto power in the Governor alone. [10] A majority vote of both houses, however, was all that was necessary to pass a measure over the Governor's veto. [11] In this respect there was no difference between the two constitutions, for under the Constitution of 1818 a majority vote of both houses was sufficient to override the veto of the Council of Revision.

In the years between 1818 and 1845 the State government made some unfortunate business experiments. One of these was that of

[6] Articles XIV and XV.
[7] Constitution 1848, Article IV, Section 2.
[8] Constitution 1848, Article IV, Section 5.
[9] Constitution 1848, Article IV, Section 3.
[10] Constitution 1848, Article IV, Section 21.
[11] Constitution 1848, Article IV, Section 21.

State banking. Money was scarce in these early years. The Constitution of 1818 expressly provided for the creation of a State bank. In 1821 the General Assembly established such a State bank, with power to issue notes on the credit of the State. The experiment was a failure. Bad management in loaning to irresponsible persons caused the bank to fail in 1831. Another State bank was chartered in 1835 but bad management again resulted in its failure in 1842.

During this period also the State undertook to carry out extensive schemes for the construction of internal improvements. One of these internal improvement projects, the Illinois and Michigan Canal, was successful. The scheme of building a great system of railroads, however, not only proved to be a failure but brought the State to the verge of bankruptcy. In 1837 the General Assembly appropriated $10,000,000 for the purpose of constructing railroads and other internal improvements.[12] After constructing about fifty miles of railroad, the project was abandoned in 1841. The net result of the plan to build a system of railroads was a heavy increase in the State's indebtedness.

The State's venture into the banking field and the unfortunate outcome of its internal improvement schemes produced a crisis. The State was heavily in debt and its credit was seriously impaired. It seemed almost impossible to pay the debts contracted as a result of these reckless business experiments, and there were some suggestions of repudiating the whole State debt or a part of it. Repudiation, and the consequent disgrace, were prevented, however, largely through the efforts of Governor Ford who came into office in 1842.

It was only natural that a constitutional convention assembling in the midst of, or immediately after such trying times, would endeavor to prevent similar occurrences. This purpose was accomplished by restricting the power of the Legislature to charter banks and to contract debts. The Constitution of 1848 contained several provisions concerning banks. The creation of a State bank was expressly forbidden.[13] The General Assembly was prohibited from extending or reviving the charter of the previously existing State bank,[14] and no law passed by the General Assembly relating to the incorporation of banks could become effective until it had been ratified by the people.[15] The provisions restricting the power of the General Assembly to contract debts were equally drastic. Except for the purpose of "repelling invasion, suppressing insurrection or defending the State in war," no debts in excess of $50,000 could be contracted "unless the law authorizing the same," was approved by the voters,[16] and it was further provided that "the credit of the State shall not, in any manner, be given to or in aid of any individual, association or corporation."[17] All of these provisions, which were material limitations on the General Assembly, were due to the experience of the preceding years.

The Constitution of 1848 contained certain provisions designed to restrict the power of the General Assembly to pass private and special laws—legislation for particular individuals or certain localities.

[12] Laws of Illinois 1836-37, pages 18 and 121-136.
[13] Constitution 1848, Article X, Section 3.
[14] Constitution 1848, Article III, Section 35.
[15] Constitution 1848, Article X, Section 5.
[16] Constitution 1848, Article III, Section 37.
[17] Constitution 1848, Article III, Section 38.

As will be seen later these provisions did not effectually prevent the enactment of such legislation. They are of interest, however, because they indicate that even before 1850 there was need for curbing the power of the General Assembly with reference to the enactment of private and special laws, and because they mark the beginning of constitutional limitations in this State on that power. The document prepared by the Convention of 1847 provided that "no private or local law * * * shall embrace more than one subject and that shall be expressed in the title."[18] In a few specific instances the Constitution of 1848 forbade the passage of special laws. For example, with respect to divorces, township organization and the formation of corporations the General Assembly could enact general laws only.[19] The framers of the Constitution no doubt thought that these provisions would materially restrict private and special legislation. But in this they were mistaken. During the period from 1850 to 1870 the enactment of private and special laws became a serious evil.

The judiciary department of the government was reorganized by the new instrument. The judicial power was vested in one Supreme Court, circuit courts, county courts and justices of the peace, and the General Assembly was given power to establish local inferior courts in cities.[20] The old instrument vested the judicial power in a Supreme Court and such inferior courts as might be established by the General Assembly.[21] The Constitution of 1818 provided that the Supreme Court should consist of four members, to be appointed by the General Assembly and commissioned until 1824. After 1824, the General Assembly could increase the number of Supreme Court judges. The power of appointing the justices of the Supreme Court was fully vested in the General Assembly but, after 1824, the justices held office during good behavior and could be removed only through impeachment proceedings.[22] As might have been expected the power of appointment and the power to increase the number of judges, thus vested in the General Assembly, led to serious abuses which tended to impair the integrity and usefulness of the highest judicial tribunal of the State.

In 1841 three of the four Supreme Court judges were Whigs. They had been appointed by the General Assembly some years before when the Whigs were in control. Some time before 1841, however, the Democrats had gained political ascendancy over the Whigs. In 1839 the Supreme Court had rendered a decision which was deemed inimical to the interests of the Democratic party.[23] In 1839 the Whigs conceived the idea of regaining their lost prestige by disenfranchising alien residents, ninety per cent of whom were Democrats. A test case was made and carried to the Supreme Court. Although, under the Constitution of 1818, it had always been the practice to permit alien residents to vote, the Democrats feared that the Supreme Court, dominated by Whig judges, would hold that alien residents had no right to vote and thus restore the Whig party to power. This the Democrats were determined to prevent. In 1841, the General Assembly

[18] Constitution 1848, Article III, Section 23.
[19] Constitution 1848, Article III, Section 32; Article VII, Section 6; Article X, Section 1.
[20] Constitution 1848, Article V, Section 1.
[21] Constitution 1818, Article IV, Section 1.
[22] Constitution 1818, Article IV, Sections 3 and 4.
[23] Field v. People, 2 Scammon 79 (1839).

passed a bill increasing the number of Supreme Court judges to nine. The bill was vetoed by the Council of Revision but was promptly passed over the veto and five new judges, all Democrats, were appointed. It is interesting to note that pending the passage of the judiciary reform measure, the Supreme Court decided the test case but evaded the issue as to whether or not aliens could vote by basing their decision on another ground. Stephen A. Douglas, later the opponent of Lincoln, openly charged the Whig members of the Supreme Court with having deliberately evaded the real issue in the case in the hope that the Democrats, no longer threatened by an adverse decision, would abandon their reform measure, and a disgraceful controversy ensued. To prevent the recurrence of such a situation the Convention of 1847 took from the General Assembly both the power to appoint and the power to increase the number of Supreme Court judges. The Constitution of 1848 provided that the Supreme Court should consist of three popularly elected members, whose terms of office should be nine years,[24] and gave the General Assembly no power to increase the number of judges. The provision limiting the term of office of a justice of the Supreme Court to nine years was due to the feeling against appointments for life, such as had been provided for by the previous Constitution.

The inferior court organization provided for by the Constitution of 1848 was taken over largely from the then existing statutory organization of the judiciary. The first Constitution had merely given the General Assembly the power to create inferior courts. Under this power the General Assembly had created circuit courts, county courts in certain counties, and justices of the peace. In providing for the same inferior courts the framers of the second Constitution merely incorporated into that instrument plans previously adopted by the General Assembly.

A considerable number of detailed provisions were incorporated into the Constitution prepared by the Convention of 1847. There were two reasons for this, both of which are exemplified by what has just been said concerning the limitations on the powers of the General Assembly and the provisions relating to the organization of the inferior courts. The first of these reasons was the desire to curtail the powers of the General Assembly because of previous abuses. The limitations on the Legislature with reference to State banks, contracting debts and special legislation illustrate this desire. The second reason was the tendency of constitutional conventions to adopt and embody in the Constitution prepared by them, plans or schemes which had already been put into operation and had proved satisfactory. The provisions in the second Constitution relating to inferior court organization indicate this tendency. The General Assembly, long before 1847, had perfected an inferior court organization by creating and establishing circuit courts, county courts in certain counties, and justices of the peace. The system of inferior courts provided for by the Legislature was satisfactory and the Convention of 1847 embodied it in the Constitution of 1848.

[24] Constitution 1848, Article V, Sections 2 and 3.

The Constitution of 1848 restricted the right of suffrage to a greater degree than the first Constitution. Under its terms all white male citizens above the age of twenty-one having resided in the State for one year preceding any election were entitled to vote at such election.[25] The Constitution of 1818 provided that all white male inhabitants above the age of twenty-one years having resided in the State for six months prior to any election were entitled to vote at such election.[26] Prior to the adoption of the second Constitution there was a serious controversy between the Whig and Democratic parties as to whether or not alien residents could vote. The Whigs took the view that the word "inhabitants" should be construed as meaning citizens, although such had not been the practice. Alien residents who could qualify in other respects had been permitted to vote. In 1839 a test case on this question was finally made and carried to the Supreme Court but that tribunal evaded the issue and decided the case on a different ground. But it is probable that the framers of the first Constitution, as a means of encouraging immigrants to this country to settle in Illinois, then a sparsely populated State, fully intended to give alien residents the ballot. It should be noted, however, that the new Constitution, while limiting the right thereafter to citizens, permitted white male *inhabitants* above the age of twenty-one years, who were residents of the State at the time of the adoption of the Constitution, to vote. The new Constitution also increased the necessary period of residence from six months to one year. *Viva voce* voting, established by the first Constitution,[27] was abolished and voting by ballot substituted.[28]

A radical change in the system of local government was made by the new Constitution. The early settlers of the State had come from the south where the county was the unit of local government and where there was no township organization. The new settlers from the northern states, however, were accustomed to some form of township government and were responsible for the provision in the new Constitution directing the General Assembly to enact a general law authorizing any county, whose voters favored township organization, to adopt the township system.[29]

Articles XIV and XV of the new Constitution were submitted to the people separately. This was due to the fact that there was considerable controversy in the convention concerning both articles and because the public was particularly interested in them. Both were adopted but by smaller majorities than the new Constitution. Article XIV directed the General Assembly at its next session to pass laws prohibiting "free persons of color from immigrating to and settling in this State; and to effectually prevent owners of slaves from bringing them into this State for the purpose of setting them free." Although the majority of the people were opposed to slavery they were not ready to give the duties and privileges of citizenship to the negro. He was not liable to militia service; he did not have to pay poll taxes;

[25] Constitution 1848, Article VI, Section 1.
[26] Constitution 1818, Article II, Section 27.
[27] Constitution 1818, Article II, Section 28.
[28] Constitution 1848, Article VI, Section 2.
[29] Constitution 1848, Article VII, Section 6.

and he could not vote.[30] In 1848 the negro was not wanted in the State of Illinois.

Article XV provided for the levy of a two mill tax for the purpose of liquidating the State's indebtedness incurred as a result of the unfortunate experiments in State banking and internal improvements. The adoption of this article proved the determination of the people to guard the financial honor of the State.

It was impossible to alter, revise or amend the Constitution of 1818 except by assembling a convention for that purpose. This was not true of the second Constitution. That instrument, although providing for the assembling of a convention to amend the Constitution, also authorized the General Assembly to propose constitutional amendments.[31] The provisions relating to the assembling of a convention were similar to those of the old Constitution. Section 2 of Article XII, which provided for the legislative proposal of amendments, was as follows:

> "Any amendment or amendments to the Constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by two-thirds of all the members elect in each of the two houses, such proposed amendment or amendments shall be referred to the next regular session of the General Assembly, and shall be published at least three months previous to the time of holding the next election for members of the house of representatives; and if, at the next regular session of the General Assembly after said election, a majority of all the members elect in each branch of the General Assembly shall agree to said amendment or amendments, then it shall be their duty to submit the same to the people at the next general election, for their adoption or rejection, in such manner as may be prescribed by law; and if a majority of all the electors voting at such election for members of the house of representatives shall vote for such amendment or amendments, the same shall become a part of the Constitution. But the General Assembly shall not have power to propose an amendment or amendments to more than one article of the Constitution at the same session."

No proposal to amend the Constitution could be submitted to the people until it had been acted upon favorably by two successive Legislatures. An amendment could not be proposed at all unless it was "agreed to by two-thirds of all the members elect in each of the two houses." If a proposed amendment was agreed to by two-thirds of the members in each house it was submitted to the next General Assembly. Favorable action by "a majority of all the members elect in each branch" of the succeeding General Assembly authorized the submission of the proposed amendment to the voters. This method of amending the Constitution was too cumbersome and complex. Moreover, the General Assembly was forbidden to propose amendments to more than one article of the Constitution at the same session. This was a decided limitation on the power of the General Assembly to propose Constitu-

[30] Constitution 1848, Article VIII, Section 1; Article IX, Section 1; Article VI, Section 1.
[31] Constitution 1848, Article XII.

tional amendments. For these reasons the additional method of amending the Constitution adopted by the Convention of 1847 was not a very effective one. In 1856, eight years after the adoption of the Constitution, a resolution of the General Assembly favoring the calling of a convention to revise, alter or amend that instrument was submitted to the voters, but failed of adoption. The promptness of the movement to assemble a constitutional convention was no doubt influenced by the difficulties attending the legislative proposal plan of amending the Constitution.

THE CONVENTION OF 1862.

During the period from 1850 to 1860 the population of the State increased from 850,000 to 1,700,000, or one hundred per cent. This increase in population was accompanied by rapid industrial development. The Convention of 1847 had not anticipated this remarkable increase in population and industrial development. A Constitution which was framed for less than 850,000 people and which did not contemplate an extremely rapid growth in population, could not meet the needs of double that number. The Constitution of 1848 was defective in many respects. The two principal defects, however, were that (1) it did not effectually prohibit private and special legislation; and (2) that it fixed the salaries of the various State officers.

It is possible that the framers of the Constitution of 1848 thought that they had materially restricted the power of the General Assembly to enact private and special laws. But it soon became evident that the second Constitution had no such effect. The provision that a private or local law should contain but one subject which "shall be expressed in the title" did not operate to reduce the number of private and local laws. It is true that the General Assembly could not pass special laws with reference to divorces, township organization and the formation of corporations. The Constitution of 1848 expressly provided that the General Assembly should enact general laws with respect to those subjects. But with the exception of a few specific restrictions, such as those just mentioned, the General Assembly was free to pass private or special laws on nearly all subjects. The power of the General Assembly to pass private and special laws was greatly abused. Great numbers of private and special bills were introduced at each session of the General Assembly. Many of them were of the most trivial character. The time of the General Assembly was taken up by the consideration of private and special bills. Consequently, bills of a public nature were delayed, ill-considered or perhaps never passed. Moreover, the General Assembly passed so many private and special laws that it was impossible to have given them proper consideration. In 1857 and 1859 the private and public laws were bound together and each session required a volume of 1450 pages. In 1861 the private and public laws were bound separately. The volume of private laws consisted of 750 pages and the volume of public laws contained 288 pages. By 1860 the enactment of private and special legislation had become an evil of serious proportions.

The Constituion of 1848 fixed the salary of the Governor at $1,500 er year, the State Auditor at $1,000, and the Secretary of State and

the State Treasurer at $800 each per year.[32] The annual salary of each justice of the Supreme Court was fixed at $1,200 and the salary of each judge of the circuit court was fixed at $1,000 per year.[33] These salaries were decidedly inadequate. As the State developed the duties of these officers necessarily increased. The folly of fixing salaries in an instrument difficult to amend soon became evident.

In February, 1859, the General Assembly by a two-thirds vote of each house adopted a resolution favoring the assembling of a convention to alter, revise or amend the existing Constitution. The question of calling a convention was submitted to the people at the regular election in 1860 and was voted on favorably. The delegates to the convention were elected in the latter part of 1861. There were seventy-five delegates. The Constitution of 1848 provided that the convention should "consist of as many members as the house of representatives at the time of making said call," and, at that time, there were seventy-five members in the lower house.[34] The convention assembled on January 7, 1862, and adjourned on the 24th day of March following. The Constitution adopted by the convention was submitted to the people on the 17th day of June, 1862 and rejected.

Public opinion was arrayed against the document submitted by the convention for three definite reasons.

(1) The delegates were elected and performed their work during the Civil War. In the early part of the convention the majority of the delegates took certain steps which were considered disloyal. For example, the delay in acting upon and the amendment or modification of resolutions commemorating Northern victories were regarded as disloyal to the Union. In February a certain newspaper made the charge that certain members of the convention were "Knights of the Golden Circle," an order favoring the secessionists. This charge led to an investigation by a convention committee which finally reported that the accusation was untrue. But the charge was taken up by the Republican newspapers and much was made of it in the campaign preceding the election in June, 1862.

(2) Partisanship was evident in the convention. Early in the session the Democratic majority showed its inclination to make demands on Governor Yates, the Republican Governor, and to investigate the Executive Department of the State. The provision in the Constitution adopted by the convention which reduced the terms of State officers to two years and ordered an election for State officers in November following,[35] although the present State officers had served but two years of their four-year terms, was regarded as an attempt to displace the Republican officers. The legislative apportionment provided for in the instrument prepared by the convention was looked upon as a Democratic gerrymander.[36] These actions antagonized the Republicans who made every effort to prevent the adoption of the Constitution submitted by the convention.

(3) The convention sought to assume powers other than those of framing a new Constitution. It sought to ratify a proposed amendment

[32] Constitution 1848, Article IV, Sections 5, 22, 23, 24.
[33] Constitution 1848, Article V, Section 10.
[34] Constitution 1848, Article XII.
[35] Journal, Convention 1862, page 1082, Article V, Section 1.
[36] Journal, Convention 1862, pages 1099-1106, Article XX.

to the United States Constitution and to redistrict the State for Representatives in Congress, both of which were legislative functions. The majority of the delegates insisted that the convention could supersede the Legislature in any and all matters. The convention assumed the power to investigate the conduct of the different divisions of the Executive Department and it attempted to instruct State officers in the performance of their duties. It attempted to issue bonds and to enact laws by promulgating ordinances. And some of its members contended that it was not necessary to submit the convention's work to the people. These endeavors to establish a temporary provisional government were not popular and, no doubt, influenced many voters to cast their ballots against the proposed Constitution.

Never having been put to a practical test, it is impossible to say that the Constitution submitted by the Convention of 1862 would have been an effective instrument. It is certain, however, that the two principal defects in the Constitution of 1848 would have been remedied by the proposed Constitution of 1862. These defects were (1) the fixing of salaries for State officers, and (2) the failure to restrict private and special legislation. The Constitution prepared by the third constitutional convention did not permanently fix the salaries of State officers but gave that power to the General Assembly. The following provision illustrates the manner in which the power to fix salaries was placed in the hands of the General Assembly:

> "The judges of the Supreme and circuit courts shall receive such salaries, payable quarterly, as shall be prescribed by law, which shall not be altered during their term of office * * *"[37]

Under this system no difficulty in increasing the salary of any official whose duties had become more numerous and burdensome would be encountered. It is less difficult to amend a law than a Constitution.

The rejected Constitution contained the following provisions with respect to private and special legislation:

> 1. "Every bill shall be read at large on three different days in each house and * * * all private bills shall be printed at the expense of those for whose benefit the same are introduced."[38]
>
> 2. "The General Assembly shall not pass any local or special laws in any of the following enumerated cases, that is to say: for granting divorces; changing the names of persons; laying out, opening, altering and working on roads or highways; vacating roads, town plats, streets, alleys and public squares; locating and changing county seats; regulating county and township business; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace and constables; or providing for changes of venue in civil and criminal cases. In all the cases enumerated above, all laws shall be general and of uniform operation throughout the State."[39]

It is clear that the second of these provisions would have lessened the private and special legislation evil. Whether or not the provisions

[37] Journal, Convention 1862, page 1087, Article VI, Section 14.
[38] Journal, Convention 1862, page 1079, Article IV, Section 22.
[39] Journal, Convention 1862, page 1080, Article IV, Section 30.

relating to the reading of bills and the printing of private bills would have had any effect in mitigating that evil, it is evident that the provisions forbidding special legislation on several subjects would have had that effect.

The worth of the proposed Constitution of 1862 may be ascertained to some extent by its influence on the present Constitution which was adopted in 1870. When it is found that many of the principles contained in the rejected Constitution were carried forward into the present Constitution the worth or efficiency of the rejected instrument in some respects is established beyond controversy. The provisions requiring bills to be read on three different days in each house is found in the Constitution of 1870. The framers of the present Constitution also adopted the plan of enumerating several subjects with respect to which the General Assembly could not pass private or special laws. The principles constituting the basis of other provisions in the rejected Constitution, such as those creating a prosecuting attorney for each county instead of each judicial district,[40] making all taxes due and payable at the same time and to the same officer[41] and prohibiting municipal corporations from lending their credit to any private person or corporation,[42] were also incorporated into the Constitution of 1870. There can be no doubt that the Constitution which failed of ratification contained many desirable provisions.

CONSTITUTION OF 1870.

After the rejection of the Constitution submitted by the Convention of 1862 the conditions leading to the assembling of that convention not only continued to exist but became more and more intolerable. The private and special legislation evil grew to such proportions that practically the entire time of the General Assembly was devoted to the enactment of private and special laws, while measures of public interest were, in many instances, stifled or passed without due consideration. The following table shows the extent to which the evil had developed:

Session.	Number of laws.	Number of private laws.	Number of general laws.
1865	840	724	116
1867	1,273	1,071	202
1869	1,573	1,188	385

These figures unquestionably show that in 1865, 1867 and 1869 the General Assembly spent by far the greater portion of its time in the consideration of private and special laws but this fact is perhaps more forcefully illustrated by a table showing the number of pages required to print the private and general laws of those years.

[40] Journal, Convention 1862, page 1088, Article VI, Section 26.
[41] Journal, Convention 1862, pages 1090-1091, Article VII, Sections 6 and 8.
[42] Journal, Convention 1862, page 1081, Article IV, Section 35.

Session.	Private laws, number of pages.	General laws, number of pages.
1865	1,528	137
1867	2,523	196
1869	3,435	442

Governor Palmer in 1869 attempted to check the avalanche of private and special legislation by vigorously exercising his veto power. Seventy-two bills, the majority of which were private and special bills, were vetoed by the Governor in that year. Seventeen of the seventy-two vetoed bills were promptly passed over the Governor's veto. It soon became evident that for two reasons even a most vigorous exercise of the veto power could not operate as a serious check on the passage of private and special bills. (1) In the short time allowed him, (ten days), the Governor could not carefully review a thousand or more private and special bills. (2) The General Assembly, with the power to pass bills over a veto by a mere majority vote, had evidenced an inclination to exercise that power, thus nullifying the restraining influence of the Governor over private and special legislation. The need for constitutional restrictions on the power of the General Assembly to pass private and special laws was imperative.

The Constitution of 1848 fixed the salaries of State officials. Such salaries, therefore, could be increased only by constitutional revision. The necessity for increasing the salaries of the various State officers, which was so keenly felt even before 1862, became more acute. The population of the State had steadily increased and was accompanied by rapid industrial development. As a result many additional duties were cast upon the State officials. It was absurd that the Governor of a state with a population of more than 2,000,000 should receive a salary of only $1,500 per annum; that the Secretary of State and State Treasurer should each receive an annual salary of only $800; and that a judge of the Supreme Court should receive a yearly salary of only $1,200. It was absolutely necessary to increase the salaries fixed by the Constitution of 1848.

The judicial system provided for by the Constitution of 1848 was rendered inadequate by the rapid growth of the State. The second Constitution provided for a Supreme Court to consist of three members, nine circuit courts, county courts for each county and prosecuting attorneys for each circuit court district. The increase in population and business of the state necessarily led to an increase in the amount of litigation to be disposed of by the courts. The General Assembly under its constitutional power to establish additional circuit courts and to create prosecuting attorneys in each county instead of each circuit court district might have relieved the situation, but for some reason it did not choose to act.[43] Confronted by a deluge of private and special bills at each session, the General Assembly probably found no time to consider a reorganization of the judiciary. But it was necessary to increase the number of Supreme

[43] Constitution 1848, Article V, Sections 7 and 28.

Court judges, something which the General Assembly could not constitutionally do. So many cases came before the Supreme Court that it was impossible for three judges to consider all of them carefully.

Thus it is seen that there were three definite reasons for the calling of a convention to revise the Constitution of 1848: (1) The need for curbing the power of the General Assembly with reference to private and special legislation; (2) the desirability of increasing the salaries of certain constitutional officers; and (3) the necessity for a reorganization of the judiciary.

In 1867 the General Assembly adopted a joint resolution providing that the electors at the next election of members of the General Assembly should "vote for or against calling a convention to form a new Constitution for the State of Illinois."[44] A favorable vote was had and the delegates were elected at a special election in November, 1869. The Constitution of 1848 provided that a constitutional convention should consist of as many delegates as there were members of the House of Representatives at the time of calling the convention.[45] In accordance with the terms of that instrument eighty-five delegates were elected. The convention assembled at Springfield on December 13, 1869 and adjourned on May 13, 1870.

There are three plans of submitting the work of a constitutional convention to the voters. It may be submitted as (1) a series of amendments to the existing Constitution, each amendment to be voted on separately; (2) a complete new Constitution to be accepted or rejected as a whole; or (3) a complete new Constitution together with certain other provisions to be voted on separately. The Convention of 1869–70 adopted the third plan and submitted a complete new instrument together with several other provisions to be voted on separately. Some of the provisions to be voted on separately were designated as separate sections. Others, such as the articles on counties and warehouses, although incorporated in the complete instrument were, nevertheless, submitted to a separate vote. Under the terms of section 8 of the Schedule, Constitution of 1870, the voters were required to vote on eight separate questions in addition to a complete new Constitution. The relevant portion of that section is as follows:

> "This Constitution shall be submitted to the people of the State of Illinois for adoption or rejection at an election to be held on the first Saturday in July in the year of our Lord one thousand eight hundred and seventy and there shall be separately submitted at the same time for adoption or rejection sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen relating to railroads, in the article entitled 'Corporations,' the article entitled 'Counties,' the article entitled 'Warehouses,' the question of requiring a three-fifths vote to remove a county seat, the section relating to the Illinois Central Railroad, the section in relation to the minority representation, the section relating to municipal subscriptions to railroads or private corporations and the section relating to the canal."

[44] Laws of Illinois 1867, page 192.
[45] Constitution 1848, Article XII, Section 1.

The new Constitution and the eight provisions to be voted on separately were ratified at the special election held on July 2, 1870 and became operative on August 8, 1870.[46]

The Constitution of 1870 is a more complete instrument than the Constitution of 1848 and, in most respects, is an improvement on the preceding document. The delegates to the Convention of 1869–70 were faithful to their trust and bestowed considerable care and attention upon the problems which made the convention necessary. Private and special legislation was effectually restrained by the adoption of section 22 of Article IV. That section is of great interest and is herein set forth in full:

> "The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say; for—
>
> Granting divorces;
>
> Changing the names of persons or places;
>
> Laying out, opening, altering and working roads or highways;
>
> Vacating roads, town plats, streets, alleys and public grounds;
>
> Locating or changing county seats;
>
> Regulating county and township affairs;
>
> Regulating the practice in courts of justice;
>
> Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables;
>
> Providing for changes of venue in civil and criminal cases;
>
> Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village;
>
> Providing for the election of members of the board of supervisors in townships, incorporated towns or cities;
>
> Summoning and impaneling grand or petit juries;
>
> Providing for the management of common schools;
>
> Regulating the rate of interest on money;
>
> The opening and conducting of any election, or designating the place of voting;
>
> The sale or mortgage of real estate belonging to minors or others under disability;
>
> Protection of game or fish;
>
> Chartering or licensing ferries or toll bridges;
>
> Remitting fines, penalties or forfeitures;
>
> Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed;
>
> Changing the law of descent;
>
> Granting to any corporation, association or individual, the right to lay down railroad tracks, or amending existing charters for such purpose;
>
> Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever;
>
> In all other cases where a general law can be made applicable, no special law shall be enacted."

The framers of the present Constitution carefully refrained from fixing salaries in that instrument. Subject to certain limitations the

[46] Constitution 1870, Schedule, Section 12.

power to fix salaries was placed in the hands of the General Assembly. Since 1870 the salaries of the various State officers are fixed by law. Under this system, as the necessity arises, the General Assembly, which assembles regularly every two years, may increase or diminish salaries at will, subject only to the constitutional limitation that the salary of no person in office shall be affected during his term of office. Section 7 of Article VI, which is as follows, is typical of the provisions of the Constitution of 1870 relating to the salaries of the various State officers:

> "From and after the adoption of this Constitution, the judges of the Supreme Court shall each receive a salary of four thousand dollars per annum, payable quarterly, until otherwise provided by law. And after said salaries shall be fixed by law, the salaries of the judges in office shall not be increased or diminished during the terms for which said judges shall have been elected."

The judicial system established by the Constitution of 1848 had been outgrown. The limited number of courts and judges provided for by that instrument could not properly transact the increased amount of business that came before the courts as a result of the steady growth and development of the State. To remedy the existing situation the Constitution of 1870 increased both the number of judges and courts. Briefly, the judicial reorganization was accomplished by (1) creating a Supreme Court to consist of seven judges; (2) authorizing the General Assembly to establish after the year 1874, "inferior appellate courts of uniform organization and jurisdiction;" (3) authorizing the General Assembly to establish a circuit court judicial district with one circuit judge for each 100,000 inhabitants, or to "divide the State into judicial circuits of greater population and territory * * * and provide for the election therein * * * of not exceeding four judges * * *" (4) providing for a county court in each county; (5) authorizing the creation of probate courts in counties having a population of more than 50,000; (6) providing for the election of justices of the peace and police magistrates "in and for such districts as are, or may be provided by law;" and (7) creating a State's attorney for each county. Because of the greater population in Cook County additional provisions were made concerning the judicial system in that county. Cook County was made one circuit court judicial district. "The circuit court of Cook County shall consist of five judges, until their number shall be increased as herein provided." The superior court of Chicago was continued and called the "Superior Court of Cook County." The superior court was given concurrent jurisdiction with the Circuit Court of Cook County, and the General Assembly was authorized to increase the number of judges by adding one to either the circuit or superior court "for every additional fifty thousand inhabitants in said county over and above a population of four hundred thousand." The recorder's court of the City of Chicago was continued and designated as the "Criminal Court of Cook County." "It shall have the jurisdiction of a circuit court in all cases of criminal and *quasi* criminal nature arising in the county of Cook * * *" The judges of the circuit and superior courts of Cook County are *ex-officio* judges of the "Criminal Court of Cook County." It was also provided that "all justices of

1870, while the Convention of 1869–70 was in session, no doubt caused the constitutional framers to give the negro the ballot. That amendment provided that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude" and any attempt to deny the negro the right to vote would have been ineffectual.

Prior to 1848 the General Assembly had appropriated vast sums of money for the purpose of constructing internal improvements, principally canals and railroads. The whole internal improvement scheme was a failure and brought the State to the brink of financial ruin. The Convention of 1847, confronted by the definite problem of preventing the State from venturing again into the business world, promptly provided against similar business experiments by the State. The Constitution of 1848 not only prohibited the General Assembly from lending the credit of the State to any person or corporation but expressly forbade that body from contracting debts in excess of $50,000 without the consent of the voters. However, the people, although convinced that the State should not engage in the business of constructing internal improvements, still clung to the idea of furnishing governmental financial aid for the construction of railroads. With the sanction of the Legislature, counties, cities and townships issued bonds and the proceeds derived from the sale of the bonds were invested in the capital stock of various railroad corporations. A great number of railroad corporations came into existence and each corporation solicited capital stock subscriptions from the counties, cities or townships through which the proposed railroad was to be operated. Counties and other municipalities, by issuing bonds, purchased thousands of dollars worth of the capital stock of these railroad corporations. The great majority of these railroad enterprises were failures. In many instances the proposed railroads were not even constructed. The net result was that the investing municipalities were saddled with a heavy bonded indebtedness for which, in many cases, they had received no benefit. Several municipalities later sought to evade liability on the bonds issued by them. This led to a vast amount of litigation, some of which was carried to the United States Supreme Court.

The Convention of 1869–70 assembled at a time when many municipalities in the State were facing financial disaster. It is not surprising, therefore, to find that the new Constitution prohibits counties, cities, towns, townships and other municipalities from becoming subscribers "to the capital stock of any railroad or private corporation * * *"[53] and from incurring debts in excess of five per cent of the value of the taxable property within their respective territorial limits.[54] A limitation on the taxing power of counties is imposed by the following provision:

> "County authorities shall never assess taxes the aggregate of which shall exceed seventy-five cents per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county."[55]

[53] Constitution 1870, Separate Sections.
[54] Constitution 1870, Article IX, Section 12.
[55] Constitution 1870, Article IX, Section 8.

Two methods of amending the Constitution were prescribed by the Constitution of 1870. That instrument provided for (1) the assembling of a convention to revise, alter or amend the Constitution whenever the people voted to call such a convention and (2) authorized the General Assembly, subject to certain restrictions, to propose constitutional amendments, which could become effective, however, only upon receiving a favorable vote when submitted to the people. [5] [6]

In all of the essential features, save one, the convention plan of amending the constitution provided for by the Constitution of 1870 does not materially differ from the convention plans of the preceding documents. The one difference—and in view of results it can hardly be said to be a real difference—is that, while the two preceding Constitutions did not provide that the work of a convention should be submitted to the voters, the present Constitution expressly provides that the work of a convention shall not become effective until ratified by the people. All conventions since 1818, including the Convention of 1862, have submitted their work to the people. The right of the people to pass upon any Constitution or amendments to an existing Constitution proposed by a convention seems, since 1818, not to have been questioned until 1862 when a few delegates to the convention of that year expressed the opinion that it was not necessary to submit to the voters any Constitution that might be adopted by that convention. And perhaps the provision in the present Constitution is due to the fact that there was some conflict of opinion in the Convention of 1862 as to the right of the people to pass upon the work of a constitutional convention.

The plan, under the Constitution of 1870, of authorizing the General Assembly to propose constitutional amendments, subject to the approval of the voters, has not proven satisfactory. The power of the General Assembly to propose amendments has been restricted to such an extent that it has been practically impossible to secure constitutional amendments under this plan. But it must be admitted that at least one of the difficulties encountered in obtaining amendments under the legislative proposal method of amending the Constitution, has arisen since the adoption of the Ballot Law (1891), and could not have been in the contemplation of the constitutional framers. The present Constitution has been in force since August 8, 1870. In more than forty-seven years but seven constitutional amendments have been adopted, five of which were submitted to the voters prior to 1891. Since the enactment of the Ballot Law only two amendments have been adopted, and both of these would have undoubtedly failed had it not been for the vigorous campaigns conducted in their behalf. The tax amendment of 1916, which the Supreme Court, in an opinion handed down at the October term 1917, held was not ratified by a constitutional majority of the voters, failed of adoption notwithstanding a vigorous

[5] [6] Constitution 1870, Article XIV.

campaign by its sponsors.[57] These facts conclusively prove that the legislative proposal plan of amending the Constitution provided for by the Convention of 1869–70 is seriously defective.

The convention method of amending a Constitution is cumbersome and expensive. It is not calculated to enable immediate constitutional changes no matter how urgent such changes may be. A convention cannot be assembled and its work submitted to the electors in less than three or four years, depending, of course, to some extent on the length of timet hat the convention remains in session. Obviously the convention method should not be resorted to unless a rather thorough revision of the Constitution is deemed necessary, in which event the assembling of a body for that purpose is highly desirable. Oftentimes, however, amendments which do not involve a thorough revision of the Constitution are desired. There should be a way, less cumbersome and involving less delay, of procuring constitutional amendments of that character. For instance in 1886 a constitutional amendment making it unlawful for "the commissioners of any penitentiary * * * to let by contract to any person or persons, or corporations, the labor of any convict confined within said institution" was deemed necessary. Would it not have been absurd to assemble a convention of one hundred and two delegates to propose such an amendment? A mere statement of the nature of the convict labor amendment demonstrates the need for a comparatively simple method of amending a Constitution. And there can be no doubt that in adopting the legislative proposal plan of amending the Constitution, the constitutional framers were desirous of enabling the procurement of amendments similar to the convict labor amendment without incurring the expense and delay of an unwieldy constitutional convention. They necessarily realized the absurdity of assembling a convention to obtain such amendments. That they wished to devise a rather simple method of amending the Constitution under such circumstances is apparent from the fact that although the legislative proposal plan of amending the Constitution provided for by the Constitution of 1870, in the main, was taken from the Constitution of 1848, it is decidedly less complicated than the plan provided for by the earlier document. Under the Constitution of 1848 it was necessary that a legislative proposal to amend the Constitution be approved by two successive legislatures. Under its terms a proposal to amend the Constitution which was voted upon favorably by two-thirds of the members of the General Assembly was referred to the succeeding General Assembly. If a majority of the members of the succeeding General Assembly favored the proposal it was then sub-

[57] Section 2 of Article XIV of the Constitution provides that amendments proposed by the General Assembly "shall be submitted to the electors of this State for adoption or rejection at the next election of members of the General Assembly * * * and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this Constitution." The tax amendment of 1916 received a majority of all votes cast for members of the General Assembly at the general election in November, 1916, but did not receive a majority of all votes cast in the election at which it was submitted. Because section 2 of Article XIV requires amendments proposed by the General Assembly to be submitted to the people at the "next election of members of the General Assembly," it was contended that the words "at said election," appearing subsequently in that section referred to the election of members of the General Assembly, and that only a majority of the votes cast for the members of the General Assembly was required to ratify the tax amendment. A majority of the Supreme Court judges, however, held that "said election" did not refer to the election of members of the General Assembly, but to the election at which the amendment was submitted, and that the tax amendment, not having received a majority of all votes cast at the general election in November, 1916, was not legally ratified. See People v. Stevenson, 281 Ill. 17 (1917).

mitted to the voters for their approval or disapproval. The Constitution of 1870 does not require favorable action by two Legislatures. Under its terms a proposal to amend the Constitution, which receives a two-thirds vote of all members elected to each house is submitted to the voters at the next election for members of the General Assembly. But, notwithstanding the apparent intention of the framers of our present Constitution to provide a comparatively simple method of amending the Constitution without assembling a convention, they failed in their efforts.

For two specific reasons the legislative proposal method of amending the Constitution prescribed by the Constitution of 1870 has not produced satisfactory results. (1) The last sentence of section 2 of Article XIV of the present Constitution which denies the General Assembly the power to propose amendments to more than one article of the Constitution at the same session has operated as a very serious check on the proposal of constitutional amendments by that body. The Constitution of 1870 consists of fourteen articles, all of which are more or less closely connected. Any comprehensive constitutional change because of this more or less close relation between the several articles would undoubtedly affect two or more articles. A single illustration will serve to show the seriousness of this restriction on the power of the General Assembly. The "short ballot" idea, which, to state it briefly, contemplates the reduction of the number of elective officers, could not be adopted in this State without expressly amending three or four articles of the Constitution. The short ballot scheme embraces but one comprehensive principle. Nevertheless, because of the relation of the several articles of the Constitution to each other, it could not be put into operation without affecting three or four of the fourteen articles and for that precise reason the General Assembly is absolutely powerless to propose an amendment carrying out the short ballot plan. Almost any fundamental constitutional change would affect more than one article of the Constitution. Because the General Assembly is forbidden to propose amendments to more than one article at the same session its power to initiate constitutional changes is materially limited. As a matter of fact hardly a single far-reaching constitutional change, such as the short ballot scheme, even though it embraces but one comprehensive idea, can be attained in this State except by assembling a constitutional convention.[58]

This provision which prohibits the General Assembly from proposing amendments to more than one article at the same session has another drawback. It leads to what has been called "competing amendments." Any constitutional amendment proposed by the General Assembly must receive a two-thirds vote in both houses. One group of legislators will favor an amendment to a certain article of the

[58] The Supreme Court has taken the view that this particular provision of section 2 of Article XIV of the Constitution should not be so strictly construed as to prevent an express amendment to one article of the Constitution even though the effect of the express amendment is to impliedly amend other articles. In Chicago v. Reeves, 220 Ill. 274 (1906) it was held that "section 2 of Article XIV was intended to prohibit the proposal of express amendments to more than one article of the Constitution at the same session, and was not intended to prevent implied amendments or changes which were necessarily worked in other articles of the Constitution by the express amendments of a particular article of the Constitution." It is apparent, however, that the liberal construction of this provision by the Supreme Court affords but little relief. The General Assembly may propose express amendments to but one article of the Constitution at the same session.

Constitution: another group will favor an amendment to a dif
article. Both amendments cannot be adopted at the same s
Neither group will withdraw its proposed amendment and, consequ
neither of the proposed amendments can secure the necessary
thirds vote to authorize its submission to the voters.

(2) Section 2, Article XIV, provides that all proposals of
tutional amendments by the General Assembly shall be sub
to the electors at the next election of members of the General Ass
It further provides that no such amendment shall become e
unless it shall receive a majority of all votes cast at "said ele
The effect of these provisions is to make it almost impossible to
the adoption of any amendment proposed by the General As
It must be admitted, however, that this has been true only si
enactment of the Ballot Law (1891).[59] Under the Ballot
propositions to be voted upon were printed on the official ball
blank spaces for both favorable and unfavorable marks, but
provision by which a straight party vote would count either
against such propositions. If the voter did not specially mar
of the blank spaces before any proposition on the official b
failed to vote at all on that proposition. As a general rule th
paid little or no attention to the propositions printed on the
ballot. Their primary interest was in the candidates for offi
result was that during the period in which the Ballot Law as o
enacted remained in force not a single proposition which was su
to the voters at a general election received a total affirma
negative vote, equal to fifty per cent of the total number
cast at the election at which it was submitted. All const
amendments proposed by the General Assembly must receive a
of the votes cast at the election at which they are submitted
the original Ballot Law it was impossible to get fifty per ce
voters to vote at all on a proposed amendment, to say n
getting a majority of them to cast favorable votes. Every cons
amendment submitted to the people by the General Assem
the original Ballot Law was defeated.

The General Assembly in 1899 sought to remedy this
The Ballot Law was amended by an act which provided that
sitions to be voted on should be printed on a separate ballot
upon which the names of the candidates appeared.[60] It wa
that the separate ballot would tend to call the voter's at
the matters printed thereon and thus invite action on his
failure of the recent tax amendment to receive a majority o
cast at the general election in 1916, although its proponents
a most thorough campaign in its behalf, seems to indicate
under the act of 1899 it is difficult to get the voters to act o
constitutional amendments. It is only fair to point out
that two constitutional amendments have been adopted
But there can be no doubt that both of them would have
it not been for the very vigorous campaigns waged by those w
the amendments. Nevertheless, it is apparent that since 18

[59] Hurd's Revised Statutes 1915-16, Chapter 46, Sections 288-323.
[60] Hurd's Revised Statutes 1915-16, Chapter 46, Section 303.

ion requiring constitutional amendments proposed by the Legislature receive a majority of the votes cast at the election at which they submitted, before becoming operative, has become a serious obstacle.

Under the system of voting which prevailed at the time of the embling of the Convention of 1869–70, and which continued until 91, it was not a difficult matter to get a majority of the voters at election to take some action with reference to any proposition sub-ted at that election. This does not in any manner mean that the ers of that period, as compared with the voters of the succeeding iod, took a greater interest in public measures. It simply means t the system of voting in force in that period was calculated to pro-e the vote of non-interested voters on public measures. As a general e under that voting system the elector voted on public measures, ardless of his interest in such measures and often without even know-that he was voting on them. From 1848 to 1891 each political ty printed its own ballots. The duty of carrying out the legal uirements concerning the submission of public measures, therefore, volved upon the political parties. To some extent the General embly sought to regulate the manner of submitting public measures the sum total of all these regulations, in so far as they affected stitutional amendments proposed by the General Assembly, merely e the political parties the option of selecting any one of three rules erning the submission of such amendments. They could (1) omit all ntion of a proposed amendment on the ballot; (2) print either the rmative or the negative of the measure; or (3) print the amendment ull with blank spaces in which the voter might express his approval disapproval. And in 1877, the third rule was expressly abrogated an act of the General Assembly.

In actual practice the parties took advantage of the second rule. en an amendment to the Constitution proposed by the General embly was to be voted on the party committee or convention de-mined the party's attitude with reference to it. If the party com-tee or convention favored the amendment the ballots of that party uld contain the words "For the proposed amendment to section —— of Article ——— of the Constitution" and no other reference the measure. If the committee or convention opposed the proposed endment the word "Against" would be substituted for the word or." In either event, however, the voter was bound by the action his party committee or convention unless he took the precaution scratch the measure as printed. If his ballot contained the words or the proposed amendment" and he failed to draw a line through se words he voted for the amendment, although as a matter of t he may not have known anything at all about it. Under this tem all straight party votes were cast either for or against a pro-sed amendment, depending on the manner in which the party com-ttee or convention had determined to print the measure on the llot. It was not difficult to get a majority of the voters in an election which an amendment was submitted to vote one way or the other the proposed measure; in fact there was no way in which the elector uld avoid registering either his approval or disapproval. If he did

Constitution; another group will favor an amendment to a different article. Both amendments cannot be adopted at the same session. Neither group will withdraw its proposed amendment and, consequently, neither of the proposed amendments can secure the necessary two-thirds vote to authorize its submission to the voters.

(2) Section 2, Article XIV, provides that all proposals of constitutional amendments by the General Assembly shall be submitted to the electors at the next election of members of the General Assembly. It further provides that no such amendment shall become effective unless it shall receive a majority of all votes cast at "said election." The effect of these provisions is to make it almost impossible to obtain the adoption of any amendment proposed by the General Assembly. It must be admitted, however, that this has been true only since the enactment of the Ballot Law (1891).[59] Under the Ballot Law all propositions to be voted upon were printed on the official ballot with blank spaces for both favorable and unfavorable marks, but with no provision by which a straight party vote would count either for or against such propositions. If the voter did not specially mark either of the blank spaces before any proposition on the official ballot he failed to vote at all on that proposition. As a general rule the voters paid little or no attention to the propositions printed on the official ballot. Their primary interest was in the candidates for office. The result was that during the period in which the Ballot Law as originally enacted remained in force not a single proposition which was submitted to the voters at a general election received a total affirmative and negative vote, equal to fifty per cent of the total number of votes cast at the election at which it was submitted. All constitutional amendments proposed by the General Assembly must receive a majority of the votes cast at the election at which they are submitted. Under the original Ballot Law it was impossible to get fifty per cent of the voters to vote at all on a proposed amendment, to say nothing of getting a majority of them to cast favorable votes. Every constitutional amendment submitted to the people by the General Assembly under the original Ballot Law was defeated.

The General Assembly in 1899 sought to remedy this situation. The Ballot Law was amended by an act which provided that all propositions to be voted on should be printed on a separate ballot from that upon which the names of the candidates appeared.[60] It was thought that the separate ballot would tend to call the voter's attention to the matters printed thereon and thus invite action on his part. The failure of the recent tax amendment to receive a majority of the votes cast at the general election in 1916, although its proponents conducted a most thorough campaign in its behalf, seems to indicate that even under the act of 1899 it is difficult to get the voters to act on proposed constitutional amendments. It is only fair to point out, however, that two constitutional amendments have been adopted since 1899. But there can be no doubt that both of them would have failed had it not been for the very vigorous campaigns waged by those who favored the amendments. Nevertheless, it is apparent that since 1891 the pro-

[59] Hurd's Revised Statutes 1915-16, Chapter 46, Sections 288-323.
[60] Hurd's Revised Statutes 1915-16, Chapter 46, Section 303.

vision requiring constitutional amendments proposed by the Legislature to receive a majority of the votes cast at the election at which they are submitted, before becoming operative, has become a serious obstacle.

Under the system of voting which prevailed at the time of the assembling of the Convention of 1869–70, and which continued until 1891, it was not a difficult matter to get a majority of the voters at an election to take some action with reference to any proposition submitted at that election. This does not in any manner mean that the voters of that period, as compared with the voters of the succeeding period, took a greater interest in public measures. It simply means that the system of voting in force in that period was calculated to procure the vote of non-interested voters on public measures. As a general rule under that voting system the elector voted on public measures, regardless of his interest in such measures and often without even knowing that he was voting on them. From 1848 to 1891 each political party printed its own ballots. The duty of carrying out the legal requirements concerning the submission of public measures, therefore, devolved upon the political parties. To some extent the General Assembly sought to regulate the manner of submitting public measures but the sum total of all these regulations, in so far as they affected constitutional amendments proposed by the General Assembly, merely gave the political parties the option of selecting any one of three rules governing the submission of such amendments. They could (1) omit all mention of a proposed amendment on the ballot; (2) print either the affirmative or the negative of the measure; or (3) print the amendment in full with blank spaces in which the voter might express his approval or disapproval. And in 1877, the third rule was expressly abrogated by an act of the General Assembly.

In actual practice the parties took advantage of the second rule. When an amendment to the Constitution proposed by the General Assembly was to be voted on the party committee or convention determined the party's attitude with reference to it. If the party committee or convention favored the amendment the ballots of that party would contain the words "For the proposed amendment to section ——— of Article ——— of the Constitution" and no other reference to the measure. If the committee or convention opposed the proposed amendment the word "Against" would be substituted for the word "For." In either event, however, the voter was bound by the action of his party committee or convention unless he took the precaution to scratch the measure as printed. If his ballot contained the words "For the proposed amendment" and he failed to draw a line through these words he voted for the amendment, although as a matter of fact he may not have known anything at all about it. Under this system all straight party votes were cast either for or against a proposed amendment, depending on the manner in which the party committee or convention had determined to print the measure on the ballot. It was not difficult to get a majority of the voters in an election at which an amendment was submitted to vote one way or the other on the proposed measure; in fact there was no way in which the elector could avoid registering either his approval or disapproval. If he did

not mark his ballot he voted for or against the measure, according to which side of the measure was printed. If he disagreed with the view of his party committee or convention concerning the proposed amendment and wished to register his disapproval of that view, he had to scratch his ballot with reference to the submitted measure, but nevertheless he voted on it.

The effect of this system, of course, was to enable the party committees or conventions to control the adoption or rejection of proposed constitutional amendments. The fate of an amendment to the Constitution proposed by the General Assembly was usually determined by the direct party vote. If such an amendment was indorsed by all political parties its adoption by a majority of all the votes cast at the election at which it was submitted was a practical certainty. If it was disapproved by all political parties its defeat was assured. Of course, it must be remembered that the attitude of the party convention or committee towards a proposed constitutional amendment was influenced by public sentiment toward the measure. And there can be no doubt that many voters who voted a straight party ticket did so with full knowledge that they were affirming the attitude of their party. This was also true of many of the voters who did not vote a straight party ticket, but failed to scratch their ballots with reference to the proposed amendment. If a voter agreed with the view of his party concerning the proposed measure, it was not necessary for him to mark his ballot with reference to the measure in order to vote for it. On the other hand there can be no doubt that many voters who failed to mark their ballots as to a proposed constitutional amendment, and thus voted for or against it according to the manner in which it was printed on the ballot, were not interested in the measure, and would not have voted one way or the other on the proposed amendment, if they had been required to mark their ballot with reference to the measure.

Under the system of voting in force in 1870, there was no difficulty in obtaining for a proposed amendment a majority of all the votes cast at the election at which it was submitted if it was approved by the political parties. In view of that fact there was nothing onerous in the requirement that a constitutional amendment, to become effective, must receive a majority of the votes cast in the election at which it was submitted. The difficulty with that requirement arises since 1891, because the official Ballot Law makes no provision for straight party votes for or against proposed amendments. The framers of the present Constitution, however, could not have contemplated the adoption of the Ballot Law some twenty years after the completion of their labors. When the Constitution was adopted the majority vote requirement of that instrument was not burdensome. Any criticism of the framers of the Constitution of 1870 because of that requirement is, therefore, unjust. They should not be censured because a change in the election laws, a matter over which they had no control, has rendered burdensome a provision of the Constitution which was satisfactory when originally drafted.

Under present conditions the legislative proposal plan of amending the Constitution of 1870 is defective in two respects. (1) The provision

of the Constitution which prohibits the General Assembly from proposing amendments to more than one article of the Constitution at the same legislative session has operated as a decided limitation on the power of the General Assembly to propose constitutional amendments. (2) The further requirement that no constitutional amendment shall become effective until it has been approved by a majority of the electors voting in the general election at which it is submitted presents a serious difficulty. The very few constitutional amendments that have been adopted in the course of nearly fifty years indicate the seriousness of the defects in the legislative proposal method of amending the Constitution prescribed by the Convention of 1869–70. It is true no doubt that the delegates to that convention had no intention of rendering ineffectual the legislative proposal method of amending the Constitution provided for by them. Nevertheless, at the present time it is almost impossible to amend the Constitution except by assembling a convention for that purpose. Unquestionably the ineffectiveness of the legislative proposal plan of amending the Constitution is a serious defect in the Constitution of 1870.

AMENDMENTS TO THE CONSTITUTION OF 1870.

No constitutional convention has been assembled in this State since the adoption of the present Constitution. Several constitutional amendments, however, have been proposed by the General Assembly, seven of which have been adopted by the people. Five of the seven amendments were ratified by the people before 1891. The remaining two amendments were ratified by the electors in 1904 and 1908, respectively. All of the adopted amendments are incomprehensive, in the sense that they made no attempt to change materially the Constitution as a whole. Even the amendment of 1904, which gave the General Assembly extensive powers to provide a system of local government for the City of Chicago, cannot be said to be comprehensive in the sense that it materially changed or altered the system of government provided for by the Constitution of 1870. Of necessity all amendments proposed by the General Assembly must deal with issues affecting but one article of the Constitution. The General Assembly is forbidden to propose amendments to more than one article of the Constitution at the same session. Because of the more or less close relation between the several articles of the Constitution, any substantial constitutional change would probably require the alteration of more than one article, and the General Assembly is powerless to propose such a change. Any comprehensive revision of the present Constitution can be accomplished only by assembling a convention for that purpose. A brief discussion of the amendments to the Constitution will show that none of them involves any substantial change in the Constitution as a whole.

The first constitutional amendment was proposed by the General Assembly in 1877 and ratified by the voters on November 5, 1878. The purpose of this amendment was to give the General Assembly power to "provide for the organization of drainage districts, and vest the corporate authorities thereof with power to construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches

and levees heretofore constructed under the laws of this State, by special assessments upon the property benefited thereby."[61] In Updike v. Wright, [62] the Supreme Court held that drainage districts could not levy special assessments because the Constitution of 1870 limited that power to cities, towns and villages. Under that decision it was necessary to amend the Constitution in order to give drainage districts the power to levy special assessments. The sole purpose of the first amendment to the Constitution was to give drainage districts that power.

The second amendment to the Constitution was proposed by the General Assembly in 1879, and was voted upon favorably at the general election on November 2, 1880. This amendment changed section 8 of Article X of the Constitution. The section as amended provides for the election of county judges, county clerks, sheriffs and county treasurers at one regular November election, and coroners, clerks of the circuit court and recorders of deeds at the next regular November election, two years later. The terms of all these officers are fixed at four years, and sheriffs and treasurers cannot succeed themselves. Under the section as it originally appeared the above mentioned officers and a county surveyor were made elective officers but, with the exception of recorders of deeds who were to be elected at general elections, no date was specified for their election. Moreover, the original section fixed the terms of office for county judges, county clerks, clerks of the circuit court, recorders of deeds and county surveyors at four years, and sheriffs, coroners and county treasurers at two years, but did not prevent any such officer from being a candidate for re-election. The section as amended does not mention county surveyors, and as a result county surveyors are no longer constitutional officers.

In 1883 the General Assembly proposed an amendment to section 16 of Article V of the Constitution. The proposed amendment was ratified by the vote of the people at the general election held on November 4, 1884, and proclaimed adopted on November 28, 1884. The original section 16 dealt with the Governor's veto power. The purpose of the amendment was to enlarge the veto power by authorizing the Governor to veto items in appropriation bills. Prior to the adoption of the amendment, the Governor was forced to treat an appropriation bill as any other bill. He had to accept such a bill as a whole or veto it as a whole. If the Governor disapproved of one or two items in an appropriation measure consisting of several items, he was compelled to accept the measure as presented to him, or reject it in its entirety. The difficulties attending the passage of an extensive appropriation bill had the effect of causing the chief executive to refrain from rejecting such a bill *in toto*, even if he strongly disapproved of certain items of appropriation therein contained. For example, a bill making appropriations for the expenses of the State government could hardly be rejected as a whole merely because it contained one or two undesirable items. For this reason the Governor's power to veto appropriation measures was decidedly limited. Section 16 as amended directs the General Assembly to itemize all appropriations and gives the Governor the power to veto any one or more of the items contained in any appro-

[61] Constitution 1870, Article IV, Section 31.
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priation bill. That portion of amended section 16 which deals with the Governor's power to veto items in appropriation bills is as follows:

> "Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. And if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law, as to the residue, in like manner as if he had signed it. The Governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the Governor with his objections; and if any item or section of said bill not approved by the Governor shall be passed by two-thirds of the members elected to each of the two houses of the General Assembly, it shall become part of said law, notwithstanding the objections of the Governor."

It is interesting to note that Governor Deneen in 1907 and Governor Dunne in 1913 and 1915 sought to extend the power conferred by the third amendment to the Constitution by vetoing parts of items in appropriation bills. In 1915, however, this power was challenged, and the Supreme Court held that the Governor could not veto a part of an item in an appropriation measure, but that any such item had to be accepted or rejected by him as a whole.[63]

The fourth constitutional amendment was adopted by the electors at the regular election on November 2, 1886. It was proposed by the General Assembly in 1885 and submitted as a separate section to the Constitution. Of the seven constitutional amendments which have been adopted, it is the briefest. Its sole purpose is to prevent the commissioners of the penitentiaries and reformatories from making contracts with any person or corporation for the labor of the inmates of such institutions. The labor organizations in the State were largely instrumental in procuring the adoption of the fourth amendment. Prior to 1886, many convicts were hired out by the commissioners of the penitentiaries to private employers of labor. This practice was adverse to the interests of the laboring class of people, and the labor organizations favored its abolition. The convict labor amendment, as the fourth amendment is commonly called, is as follows:

> "Hereafter it shall be unlawful for the commissioners of any penitentiary or other reformatory institution in the State of Illinois, to let by contract to any person or persons, or corporations, the labor of any convict confined within said institution."

The fifth amendment was adopted at the general election on November 4, 1890. It was proposed by the General Assembly of that year. This amendment is the present section 13 of Article IX of the Constitution. It was adopted for the purpose of enabling the City

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The fourth constitutional amendment was adopted by the electors at the regular election on November 2, 1886. It was proposed by the General Assembly in 1885 and submitted as a separate section to the Constitution. Of the seven constitutional amendments which have been adopted, it is the briefest. Its sole purpose is to prevent the commissioners of the penitentiaries and reformatories from making contracts with any person or corporation for the labor of the inmates of such institutions. The labor organizations in the State were largely instrumental in procuring the adoption of the fourth amendment. Prior to 1886, many convicts were hired out by the commissioners of the penitentiaries to private employers of labor. This practice was adverse to the interests of the laboring class of people, and the labor organizations favored its abolition. The convict labor amendment, as the fourth amendment is commonly called, is as follows:

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The fifth amendment was adopted at the general election on November 4, 1890. It was proposed by the General Assembly of that year. This amendment is the present section 13 of Article IX of the Constitution. It was adopted for the purpose of enabling the City

[63] Fergus v. Russel, 270 Ill. 304 (1915).

and levees heretofore constructed under the laws of this State, by special assessments upon the property benefited thereby."[61] In Updike v. Wright, [62] the Supreme Court held that drainage districts could not levy special assessments because the Constitution of 1870 limited that power to cities, towns and villages. Under that decision it was necessary to amend the Constitution in order to give drainage districts the power to levy special assessments. The sole purpose of the first amendment to the Constitution was to give drainage districts that power.

The second amendment to the Constitution was proposed by the General Assembly in 1879, and was voted upon favorably at the general election on November 2, 1880. This amendment changed section 8 of Article X of the Constitution. The section as amended provides for the election of county judges, county clerks, sheriffs and county treasurers at one regular November election, and coroners, clerks of the circuit court and recorders of deeds at the next regular November election, two years later. The terms of all these officers are fixed at four years, and sheriffs and treasurers cannot succeed themselves. Under the section as it originally appeared the above mentioned officers and a county surveyor were made elective officers but, with the exception of recorders of deeds who were to be elected at general elections, no date was specified for their election. Moreover, the original section fixed the terms of office for county judges, county clerks, clerks of the circuit court, recorders of deeds and county surveyors at four years, and sheriffs, coroners and county treasurers at two years, but did not prevent any such officer from being a candidate for re-election. The section as amended does not mention county surveyors, and as a result county surveyors are no longer constitutional officers.

In 1883 the General Assembly proposed an amendment to section 16 of Article V of the Constitution. The proposed amendment was ratified by the vote of the people at the general election held on November 4, 1884, and proclaimed adopted on November 28, 1884. The original section 16 dealt with the Governor's veto power. The purpose of the amendment was to enlarge the veto power by authorizing the Governor to veto items in appropriation bills. Prior to the adoption of the amendment, the Governor was forced to treat an appropriation bill as any other bill. He had to accept such a bill as a whole or veto it as a whole. If the Governor disapproved of one or two items in an appropriation measure consisting of several items, he was compelled to accept the measure as presented to him, or reject it in its entirety. The difficulties attending the passage of an extensive appropriation bill had the effect of causing the chief executive to refrain from rejecting such a bill *in toto,* even if he strongly disapproved of certain items of appropriation therein contained. For example, a bill making appropriations for the expenses of the State government could hardly be rejected as a whole merely because it contained one or two undesirable items. For this reason the Governor's power to veto appropriation measures was decidedly limited. Section 16 as amended directs the General Assembly to itemize all appropriations and gives the Governor the power to veto any one or more of the items contained in any appro-

[61] Constitution 1870, Article IV, Section 31.
[62] 81 Ill. 49 (1876).

priation bill. That portion of amended section 16 which deals with the Governor's power to veto items in appropriation bills is as follows:

> "Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. And if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law, as to the residue, in like manner as if he had signed it. The Governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the Governor with his objections; and if any item or section of said bill not approved by the Governor shall be passed by two-thirds of the members elected to each of the two houses of the General Assembly, it shall become part of said law, notwithstanding the objections of the Governor."

It is interesting to note that Governor Deneen in 1907 and Governor Dunne in 1913 and 1915 sought to extend the power conferred by the third amendment to the Constitution by vetoing parts of items in appropriation bills. In 1915, however, this power was challenged, and the Supreme Court held that the Governor could not veto a part of an item in an appropriation measure, but that any such item had to be accepted or rejected by him as a whole.[63]

The fourth constitutional amendment was adopted by the electors at the regular election on November 2, 1886. It was proposed by the General Assembly in 1885 and submitted as a separate section to the Constitution. Of the seven constitutional amendments which have been adopted, it is the briefest. Its sole purpose is to prevent the commissioners of the penitentiaries and reformatories from making contracts with any person or corporation for the labor of the inmates of such institutions. The labor organizations in the State were largely instrumental in procuring the adoption of the fourth amendment. Prior to 1886, many convicts were hired out by the commissioners of the penitentiaries to private employers of labor. This practice was adverse to the interests of the laboring class of people, and the labor organizations favored its abolition. The convict labor amendment, as the fourth amendment is commonly called, is as follows:

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The fifth amendment was adopted at the general election on November 4, 1890. It was proposed by the General Assembly of that year. This amendment is the present section 13 of Article IX of the Constitution. It was adopted for the purpose of enabling the City

[63] Fergus v. Russel, 270 Ill. 304 (1915).

of Chicago to issue bonds in excess of the constitutional debt limit for municipal corporations. Section 12 of Article IX prohibits any municipality from becoming indebted to an amount exceeding five per cent of the value of the taxable property within the jurisdiction of such municipality. In 1890 when the City of Chicago wished to issue bonds in aid of the World's Columbian Exposition, which was to be held in that city in 1892, it was found that the city was already indebted to an amount equalling five per cent of the taxable property within the territorial limits of the municipality. Without an amendment to the Constitution the City of Chicago was powerless to issue bonds in aid of the Exposition. The fifth amendment did nothing more than authorize the City of Chicago, which had already reached the municipal debt limit fixed by section 12 of Article IX, to issue bonds for this purpose in an amount not exceeding $5,000,000.

The General Assembly in 1903 proposed to amend the Constitution by adding to Article IV a new section, to be known as section 34. The proposed new section was submitted to the voters at the general election on November 8, 1904. It was ratified by a majority of all those voting at the election on that date and became the sixth amendment to the Constitution. This amendment authorized the General Assembly to pass local or special laws "providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago." Section 22 of Article IV expressly prohibits local or special legislation with reference to "incorporating cities, towns or villages, or changing or amending the charter of any town, city or village." Chicago, because of its large population, was confronted by serious problems which had not developed in the smaller cities. In large part these problems could be solved by the enactment of local and special laws with reference to the local government of Chicago. But section 22 of Article IV prohibited the passage of such laws. In order to give the General Assembly the power to pass local or special laws relating to the local government of Chicago, it was necessary to amend the Constitution.

It was also deemed advisable to give the General Assembly the power to abolish justices of the peace in Chicago and to limit the jurisdiction of justices of the peace in Cook County, outside of Chicago, to that territory of Cook County not embraced in the City of Chicago. But the Constitution provided that "the jurisdiction of * * * justices of the peace and police magistrates shall be uniform." In 1881 the General Assembly passed a law limiting the jurisdiction of justices of the peace in the City of Chicago to the territory embraced within the limits of the city and limiting the jurisdiction of the justices outside of Chicago to that territory of Cook County not within the City of Chicago. In People v. Meech,[64] it was decided that this law was unconstitutional, the Supreme Court holding that the General Assembly had no power to limit the territorial jurisdiction of justices of the peace in Cook County without also limiting the territorial jurisdiction of justices of the peace in other counties in a similar manner. In order to give the General Assembly the power to limit the territorial jurisdiction

[64] 101 Ill. 200 (1882).

of justices of the peace in Cook County only it was necessary, therefore, to amend the Constitution.

The seventh amendment to the Constitution of 1870 was proposed by the General Assembly in 1907 and ratified by the voters at the general election on November 3, 1908. At the time of the adoption of this amendment it was deemed desirable that the State should construct a deep waterway or canal from "Lockport * * * in the county of Will, to a point in the Illinois River at or near Utica * * *" But the Constitution as originally adopted expressly provided that "The General Assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals * * *"[65] It was clear that in the absence of a constitutional amendment, the State could not construct a canal from Lockport to Utica. The seventh amendment to the Constitution of 1870 was adopted for the purpose of authorizing the State to construct such a canal. Under the terms of this amendment the General Assembly is authorized to issue the bonds of the State in a sum not exceeding $20,000,000 to defray the cost of constructing a deep waterway or canal from Lockport to Utica.[66]

SUMMARY AND CONCLUSION.

In the previous discussion of constitutional development in Illinois no attempt has been made to summarize in detail the various provisions of the Constitutions of 1818, 1848 and 1870, or the Constitution which was rejected by the people in 1862. Nor has any attempt been made, except in the most general way, to compare the provisions of one Constitution with the provisions of another document. Each Constitution has been considered separately, and only the principal provisions of each instrument have been commented on. In the main this was deemed sufficient. A study of the four Constitutions which have been prepared or framed for the people of this State, however, reveals several interesting developments. Some of these developments will now be briefly considered.

1. The development and enlargement of the Governor's veto power is one of the most interesting features in the constitutional history of this State. Under the first Constitution the veto power was vested in a Council of Revision, composed of the Governor and the judges of the Supreme Court. From 1818 to 1841 the Supreme Court consisted of four members. From 1841 to 1848 there were nine justices of the Supreme Court. In determining whether or not a bill passed by the General Assembly should be vetoed, the Governor had but one vote in five, or, as was the case from 1841 to 1848, but one vote in ten. Each Supreme Court judge was possessed of a veto power equal to that of the Governor. In effect the Governor had no veto power under the Constitution of 1818. A majority of the judges of the Supreme Court could always prevent a veto desired by the Governor.

But the framers of the first Constitution were not content with making the Governor share the veto power with the judges of the

[65] Constitution 1870, Separate Sections.
[66] Constitution 1870, Separate Sections.

Supreme Court. They provided that a mere majority vote of the General Assembly was sufficient to override the veto of the Council of Revision. No bill could pass until it had been voted on favorably by a majority of the members of both houses of the General Assembly. A bill vetoed by the Council of Revision could be passed over the veto by the same majority which had passed the bill originally.

For two reasons, therefore, the Governor of Illinois under the first Constitution could do but little toward checking legislation which he deemed undesirable. (1) He could not veto a measure until a majority of the Supreme Court judges agreed with him that it was undesirable and should not be approved. (2) Even if he was able to get a majority of the judges to join with him in vetoing a measure, the General Assembly could re-enact it by the same vote that passed it in the first instance.

The Constitution of 1848 made one important change with reference to the power of the Governor to veto bills passed by the General Assembly. It abolished the Council of Revision and placed the veto power in the hands of the Governor alone. No change was made, however, in the number of votes necessary to pass a bill over the Governor's veto. A mere majority of the two legislative houses was authorized to pass a bill over a veto. Obviously the Governor, if a conflict arose, could not exercise an effective control over legislation for the same number of votes which passed a bill originally could re-enact the measure over the Governor's veto. Such a situation actually presented itself in 1869 when the General Assembly re-enacted seventeen bills which were vetoed by Governor Palmer.

Nevertheless, the Governor's power was strengthened by the Constitution of 1848. It is true that his vetoes could be overcome just as easily as the vetoes of the Council of Revision. But the whole veto power, irrespective of its effectiveness, had been placed in his hands. He was not obliged to share it with the judges of the Supreme Court who might disregard his wishes and prevent measures from being vetoed.

With respect to the veto power, the provisions of the rejected Constitution of 1862 and the Constitution of 1870, as originally adopted, are almost identical. It will be necessary, therefore, to consider only the provisions of the Constitution of 1870 in that connection. Under the terms of the present Constitution the veto power is vested in the Governor alone, and no bill vetoed by him can be re-enacted except by a vote of two-thirds of the members elected to each legislative house. The veto power provided for by the Constitution of 1870 is strong and effective. It is a difficult matter to get two-thirds of the members elected to each house of the General Assembly to vote for a measure which has just been vetoed by the Chief Executive. Results show the effectiveness of the veto power provided for by the Convention of 1869–70. Of the three hundred sixty-six bills vetoed since 1870, only two have been passed over the Governor's veto. And these figures become stronger proof of effectiveness when it is considered that at a single legislative session just prior to the adoption of the present Constitution seventeen bills were passed over the Governor's veto.

In 1884 an amendment to the Constitution, giving the Governor the power to veto items in appropriation bills, was adopted. The amendment also directs the General Assembly to itemize all appropriations so that the Governor may exercise the power to veto items which he deems undesirable. Prior to the adoption of this amendment, the Governor was forced to treat an appropriation bill just as he would any other measure. It was necessary for him to accept or reject it as a whole. Generally it was impracticable to veto an extensive appropriation bill *in toto* merely because a small portion of the measure was deemed undesirable. Because of that fact the Governor could exercise his veto power only to a limited extent in so far as appropriation bills were concerned. The effect of the amendment of 1884 has been to increase greatly the power of the Chief Executive in controlling appropriation measures. Now he may veto all items in an appropriation bill which he deems undesirable and approve the residue, thus exercising his veto power quite freely but without incurring the difficulties that would be sure to follow the rejection of an extensive appropriation measure in its entirety. Unquestionably the amendment of 1884 was a marked strengthening of the Governor's veto power.

The development of the Governor's veto power in Illinois has truly been remarkable. During the first thirty years of its statehood the Governors of this State, in effect, had no veto power. But notwithstanding that fact, the Governor of Illinois today possesses a veto power which, from the standpoint of effectiveness, compares favorably with the similar power of the Governor of any other state in the Union.

2. Constitutional development in this State, with reference to banking is also interesting. The Constitution of 1818 provided "that there shall be no other banks or moneyed institutions in this State than those already provided by law, except a State bank * * * which may be established * * * by the General Assembly * * *"[67] Under this provision two State banks were chartered, one in 1821, the other in 1835. Both were failures, and resulted in serious financial loss to the State. Coupled with the collapse of the internal improvement projects which were launched during the same period, the State bank failures brought the State face to face with bankruptcy. The above provision also had the effect of prohibiting the formation of banking corporations by private individuals. Unincorporated firms, however, conducted private banks during this period.

The Contsitution of 1848 expressly prohibited the creation of a State bank. It authorized the formation by private individuals of corporations or associations for banking purposes with power to issue bank notes to circulate as money. But no law authorizing the formation of banking corporations or associations could become effective until it had been submitted to the people at a general election and had received a majority of the votes cast "for and against such law." Stockholders in any banking corporation or association were made individually responsible for its debts and liabilities to an amount equal "to the amount of their respective share or shares of stock in * * * such corporation or association." It should be noted that while the first Constitution authorized the creation of a State bank and

[67] Constitution 1818, Article VIII, Section 21.

prohibited all other banking corporations, the second Constitution reversed this position and authorized the formation of banking corporations but expressly prohibited the creation of a State bank.

The Constitution of 1862, if it had been adopted, would have absolutely prevented the formation of new banking corporations or associations, of any character. It also would have prevented the extension or renewal of the charter of any banking corporation then in existence. Private banking by unincorporated persons only would have been permitted. Here again is found a startling reversal of attitude toward the banking problem. The Constitution of 1848 expressly prohibited the creation of a State bank and authorized the formation of banking corporations. The proposed Constitution of 1862 would have swept all banking corporations out of existence.[68] While the rejected Constitution of 1862 contained no direct prohibition on the creation of a State bank, the express limitation on the power of the State to contract debts would have had that effect.[69]

The provisions of the Constitution of 1870 relating to banks are similar to those of the Constitution of 1848.[70] The creation of a State bank is expressly prohibited. The formation of banking corporations or associations under a general law is authorized. Any general law or amendments thereto, relating to the organization of banking corporations must be submitted to and ratified by the voters before becoming effective. "Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held, for all its liabilities accruing while he or she remains such stockholder." Additional regulations are provided for with respect to banks of issue. These regulations concerning banks of issue are relatively unimportant, however, because since 1870 there has been no attempt to organize banks of issue under the laws of this State.

3. The Constitution of 1818 placed no restrictions on the power of either the State or its municipalities to contract debts. While this Constitution was in force, the State, by engaging in the business of banking and the construction of internal improvements, became heavily indebted. When the second constitutional convention assembled, the State was facing serious financial difficulties. The Constitution of 1848 prohibited the creation of a State bank and expressly forbade the General Assembly to contract debts in excess of $50,000 "except for the purpose of repelling invasion, suppressing insurrection or defending the State in war * * * unless the law authorizing the same shall, at a general election, have been submitted to the people and have received a majority of the votes cast for members of the General Assembly at such election." No provision was made concerning the power of municipalities to contract debts. After 1850 counties and other municipalities began issuing bonds to aid the construction of railroads and other internal improvements. As a result many of the municipalities in the State as early as 1862 were heavily involved financially.

[68] Journal, Convention 1862, page 1097, Article XVII.
[69] Journal, Convention 1862, page 1081, Article IV, Section 34.
[70] Constitution 1870, Article XI, Sections 5, 6, 7, and 8.

The proposed Constitution of 1862 contained provisions designed not only to prevent the State from contracting debts generally but to prevent State or municipal aid to private persons or corporations.

The Constitution of 1870 prohibits the creation of a State bank; denies the General Assembly the power, except for the purpose of suppressing insurrection or repelling invasion, to contract debts generally in excess of $250,000 without a favorable vote of the people; and forbids the General Assembly from loaning "the credit of the State or" making "appropriations from the treasury thereof, in aid of railroads or canals." It also provides that no municipality of the State shall subscribe for the capital stock "of any railroad or private corporation or make donation to or loan its credit in aid of such corporation." In addition to this limitation on their powers, municipal corporations are forbidden to contract debts for any purpose in excess of five per cent of the value of the taxable property within their respective jurisdictions. By providing that "County authorities shall never assess taxes the aggregate of which shall exceed seventy-five cents per one hundred dollars valuation except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county," a further limitation is imposed on the power of counties to contract debts.

Under the first Constitution there were no restrictions on State or municipal indebtedness. The second Constitution prevented the State from contracting debts generally, but placed no limitation on the power of municipalities in that respect. This, no doubt, was due to the fact that the problem of municipal indebtedness had not presented itself in 1847. This problem arose after the adoption of the Constitution of 1848, and partially as a result of the restrictions on State indebtedness contained in that instrument. Municipalities are subdivisions of the State. As long as the State itself could engage in the business of constructing railroads and other internal improvements, there was no demand for municipalities to engage in or lend their credit to that business. But the second Constitution prevented the State from constructing internal improvements and from lending its credit in aid of such projects. In order to furnish governmental financial aid to railroads and other internal improvement schemes, it was necessary to resort to some other expedient. The Constitution which was rejected in 1862 would have effectually restricted both State and municipal indebtedness. Both forms of indebtedness were materially restricted by the Constitution of 1870. Gradually the power of the State and its municipalities to contract debts has been reduced until today that power may be exercised only within very definite limits.

4. Restrictions on local and special legislation in this State have developed much along the same lines as those with reference to State and municipal indebtedness. The Constitution of 1818 contained no limitations on the powers of the General Assembly to enact local and special legislation. The Constitution of 1848 did not materially check this class of legislation. The proposed Constitution of 1862 would have checked such legislation to a large extent. The prohibitions of the Constitution of 1870 with respect to local and special legislation are even more stringent than those of the rejected Constitution. The

present Constitution completely checks the enactment of local and special laws on a great number of subjects. Step by step the General Assembly has been shorn of its power to enact local and special laws. Under the first Constitution there were no limitations on its power in that respect. At the present time the General Assembly is practically without power to pass local or special laws on any subject.

5. The constitutional history of this State indicates a marked tendency to increase the number of popularly elected officers. Under the Constitution of 1818 the Governor, Lieutenant Governor, members of the General Assembly, sheriff, coroner and county commissioners were the only elective officers. The judges of the Supreme and circuit courts, the Secretary of State, the Attorney General, the State Treasurer, and the Auditor of Public Accounts were appointive officers, all except the Secretary of State being appointed by the General Assembly. The Secretary of State was appointed by the Governor, by and with the advice and consent of the Senate.

The Constitution of 1848, in addition to continuing as elective officers all popularly elected officers under the first Constitution, provided for the popular election of the judges of the Supreme and circuit courts, the Secretary of State, the State Treasurer, and the Auditor of Public Accounts, all of whom were appointive officers under the first Constitution. Justices of the peace, who were appointed to office under the Constitution of 1818 were chosen in popular elections after 1848. The second Constitution also created certain new officers and provided that they should be selected in popular elections. These newly created officers who were to be elected by the people were clerks of the Supreme Court, county judges, State's attorneys and county and circuit clerks.

All elective officers provided for by the Constitution of 1848 were continued as elective officers by the proposed Constitution of 1862. The rejected document also provided for the popular election of certain newly created officers, such as the Attorney General and reporter of decisions of the Supreme Court.

The framers of the Constitution of 1870 continued the policy of increasing the number of elective officers. All officers who were chosen in popular elections under the Constitution of 1848 were again made elective officers by the new instrument. Several new officers were created by the present Constitution. The more important of these newly created officers, the Attorney General, the Superintendent of Public Instruction, probate judges, county treasurers, and recorders of deeds, are chosen in popular elections.

Increasing the number of popularly elected constitutional officers was intended to give the people greater control over the administration of the State government. It was thought that in this way the people would be enabled to select competent and trustworthy officials. It was also thought that officers who were elected in popular elections would be more responsive to the popular will, for the reason that any officer who disregarded the wishes of the people could be defeated if he sought re-election or election to any other office. Prior to 1870 the plan of making public officials directly responsible to the people for the conduct of their offices probably had an important effect in obtaining competent and honest public officials. During the period before

1870, and particularly at the time of the adoption of the second Constitution, the State did not have a large population and had not reached a high degree of industrial development. At that time Illinois was a State essentially rural in character. The people had a greater opportunity to know or investigate the capabilities of the various candidates. With the increasing population the opportunities of knowing the candidates lessened. In the rush of business occasioned by the growth of industries the people have neither the time nor the inclination to investigate the qualifications of the numerous candidates for office. It is a matter of serious doubt today whether or not the plan of selecting the great majority of public officers in popular elections has any tendency to aid in procuring competent public servants. The advocates of the short ballot—a plan to reduce the number of elective officers—take the view that the policy of choosing nearly all public officials in popular elections does not have the effect of enabling the selection of competent persons to administer and enforce the laws. In their opinion only those officers who are to determine policies should be chosen in popular elections. All other officers should be appointed. In that way the voters would be called upon to vote for fewer officers and could investigate the qualifications of the candidates. The officers who are to act in a purely administrative capacity should be appointed by the elective officers so that the elective officers can be held strictly accountable not only for the conduct of their own offices, but for the conduct of their appointees. And it would seem that there is a great deal to be said in favor of the "short ballot" principles.

6. The increased amount of detail in each succeeding Constitution is a noticeable feature of constitutional development in this State. The first Constitution was a very brief document and contained no detailed provisions. The Constitution of 1848 was more lengthy and contained some detailed provisions. The proposed Constitution of 1862 was a very lengthy and detailed instrument. The present Constitution, though not so long or detailed as the proposed Constitution of 1862, is much longer and more detailed than the Constitution of 1848.

Some of the detailed provisions of the later Constitutions were inserted for the express purpose of limiting the power of the General Assembly because of previous abuses. The detailed provisions of the Constitution of 1870 with reference to banks, State and municipal debts and local and special legislation indicate this purpose. Other detailed provisions were incorporated in the later documents simply because the constitutional framers wished to legislate on certain subjects. For example, the present Constitution contains a separate article on warehouses while seven sections of the article on corporations relate to railroads. Detailed provisions in a Constitution, regardless of the reasons for their incorporation into the instrument, always operate to limit the power of the General Assembly.

7. Beginning with the second constitutional convention, each convention, although providing for the usual convention method of revising a Constitution, has attempted to devise a plan of obtaining constitutional changes which would be less cumbersome and involve less delay than the convention method. The wisdom of the policy sought to be carried out by the framers of the later Constitutions is

apparent. All of the later instruments contained detailed provisions. Obviously the necessity for alteration will arise more frequently with respect to details than fundamental principles. This is particularly true when applied to legislation in Constitutions. The laws passed by the General Assembly are constantly being revised or amended. Changing conditions, though not affecting the basic principle of a law, make necessary frequent changes in the details concerning its enforcement. And so it is with Constitutions containing detailed provisions. There can be no question but that the presence of details makes necessary more frequent changes in a Constitution. It is clear, therefore, that a process of amending a detailed Constitution, simple in character and involving but little delay, should be devised.

Did the framers of the later Illinois Constitutions attempt to make the instruments prepared by them less difficult to amend than the first document because they realized that they were increasing the number of detailed constitutional provisions? It is impossible, of course, to answer this question definitely. It is probable that the members of the conventions knew that an increase in the number of detailed provisions would render necessary more frequent constitutional changes. The facts seem to bear out this statement. The Constitution of 1818, which contained substantially no detailed provisions, could be amended only by assembling a convention for that purpose. The Constitution of 1848, which contained some detailed provisions, authorized the General Assembly to propose constitutional amendments, although it also expressly provided for the assembling of a convention to alter, revise or amend the Constitution. As has been pointed out, the legislative proposal plan of amending the Constitution of 1848, because of the requirement of action by two successive Legislatures, was cumbersome and involved considerable delay.

The proposed Constitution of 1862 was a lengthy and detailed instrument. Two methods of amending the instrument were also provided, both of which were practically identical with the two methods provided for by the preceding Constitution.

The present Constitution, which contains many detailed provisions, provides for both the convention and legislative proposal methods of amending the Constitution. The legislative proposal plan of our present Constitution was taken largely from the Constitution of 1848. But it was made less complicated and involves less delay. The requirement of action by two successive Legislatures was eliminated.

Each Constitution provides for its alteration or revision by assembling a convention for that purpose. But each instrument, except the first one, while retaining the convention method of amending the Constitution, provides another method of obtaining constitutional amendments. That is a clear indication of a desire to devise a comparatively easy process of amending the Constitution. If the conventions had not regarded the legislative proposal plan of obtaining constitutional amendments as less cumbersome than the convention method, there would have been no reason for inserting it in the documents prepared by them. It is true that the legislative proposal plan of obtaining ›cessary constitutional changes provided for by the Constitution of ⁷0 is not fully effective. In large part its ineffectiveness has been

due to a subsequent development—the adoption of the Official Ballot Law (1891). Nevertheless there can be no doubt that the framers of the Constitution fully intended to make it less difficult to amend. But, be that as it may, the presence of details in a Constitution unquestionably calls for an amending process much less difficult than the convention method. And it is apparent that, under the circumstances and conditions of today, the legislative proposal method of obtaining constitutional amendments provided for by the present detailed Constitution, notwithstanding the probable good intentions of its framers, is thoroughly and completely inadequate, and enables the change or alteration of constitutional details only with the greatest difficulty.

8. The ineffectiveness of the legislative proposal method of amending the Constitution led to a movement to obviate some of the difficulties attending that method. In 1891 the General Assembly proposed an amendment to the Constitution which would have permitted the proposal of express amendments to two articles of the Constitution at the same session.[71] The proposal was submitted to the voters at the general election in 1892 and failed of adoption. Although 871,508 persons participated in the election only 178,065 voted either for or against the proposed amendment. The total affirmative vote was 84,645. The total negative vote was 93,420. In 1895 the General Assembly proposed an amendment which would have authorized the proposal of express amendments to three articles of the Constitution at the same session and would have permitted the proposal of amendments to the same article at intervals of two years instead of four years.[72] The proposed amendment was submitted to the voters at the general election in 1896 but was not ratified by a constitutional majority. The total number of votes cast in the election was 1,090,869. Only 229,676 persons voted either for or against the proposal. Of this number 163,057 voted for the proposed measure while 66,519 voted against it.

With the failure of the efforts to lessen the difficulties of obtaining constitutional amendments under the legislative proposal method came the agitation for a constitutional convention. In 1893, immediately after the failure of the proposed amendment of 1892, the Senate passed a resolution favoring the assembling of a constitutional convention.[73] A similar resolution in the House of Representatives, although voted on favorably by a majority of the members of the lower house, failed to receive the necessary two-thirds vote.[74] In 1899 a resolution to submit to the voters the question of calling a convention was introduced in the Senate, but nothing came of it.[75]. In 1901 the House of Representatives defeated a resolution for a convention by a vote of seventy-six to fifty-two.[76] Resolutions for a convention were introduced in both houses of the General Assembly in 1909, but were defeated.[77] In 1911, 1913 and 1915, resolutions for a convention were adopted by the Senate, but in each case failed to obtain the required

[71] Session Laws, 1891, page 217.
[72] Session Laws, 1895, page 331.
[73] Senate Journal, 1893, page 881.
[74] House Journal, 1893, page 543.
[75] Senate Journal, 1899, page 44.
[76] House Journal, 1901, pages 939-940.
[77] Senate Journal, 1909, pages 39, 117; House Journal, 1909, pages 261, 422.

two-thirds vote in the lower house of the General Assembly, although a majority of the members of the lower house voted for the resolutions in each of these years.[78] On January 24, 1917 a resolution to call a convention was adopted by the Senate and on March 14, 1917 was concurred in by the House of Representatives.[79] The question of calling a convention to revise, alter or amend the Constitution will be submitted to the voters at the general election to be held in November, 1918.

9. In connection with the whole problem of constitutional changes in this State, attention should be called to the fact that each new Constitution has been built upon the experience of the past without any attempt to discard constitutional provisions that have shown themselves to be desirable. The Constitution of 1818 was borrowed from other states and was based upon the experience of the older states. The Constitution of 1848 is that of 1818 changed to meet new conditions. The essential provisions of the Constitution of 1848 are still in force because repeated in the Constitution of 1870. The Constitution of 1920, if there be one, will be the Constitution of 1870 changed to meet new problems that have arisen.

[78] Senate Journal, 1911, page 925; House Journal, 1911, page 1046; Senate Journal, 1913, pages 1639-1640; House Journal, 1913, pages 2115-2116; Senate Journal, 1915, page 111; House Journal, 1915, page 329.
[79] Session Laws, 1917, page 805.

CONSTITUTIONAL CONVENTIONS UNDER THE PRESENT CONSTITUTION.

The Constitution of this State provides that:

"1. Whenever two-thirds of the members of each house of the General Assembly shall, by a vote entered upon the journals thereof, concur that a convention is necessary to revise, alter or amend the Constitution, the question shall be submitted to the electors at the next general election. If a majority voting at the election vote for a convention, the General Assembly shall, at the next session, provide for a convention, to consist of double the number of members of the Senate, to be elected in the same manner, at the same places and in the same districts. The General Assembly shall, in the Act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the convention in the performance of its duties. Before proceeding, the members shall take an oath to support the Constitution of the United States and the State of Illinois, and to faithfully discharge their duties as members of the convention. The qualification of members shall be the same as that of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the General Assembly. Said convention shall meet within three months after such election and prepare such revision, alteration or amendments of the Constitution as shall be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two or more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendments shall take effect.

"2. Amendments to this Constitution may be proposed in either house of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this State for adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law. The proposed amendments shall

be published in full at least three months preceding the election and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this Constitution. But the General Assembly shall have no power to propose amendments to more than one article of this Constitution at the same session nor to the same article oftener than once in four years."[1]

Two distinct methods of amending the Constitution are set forth in that instrument, one (section 1) by assembling a convention, the other (section 2) by legislative proposal. We are here dealing primarily with changes in the Constitution by the convention method and, therefore, section 2 of Article XIV finds no important place in this discussion. A comparison of the two methods, however, may throw some light on the question whether or not a convention is desirable. With that object in view, the two methods of amending the Constitution, authorized by that instrument itself, will be compared in a subsequent part of this bulletin.

Under our Constitution the first step in assembling a convention must be taken by the General Assembly. If two-thirds of the members of each house of the General Assembly concur that a convention is necessary, the question of having a convention shall be submitted to the voters "at the next general election." The General Assembly, in 1917, took the first step toward the assembling of a convention by adopting a resolution expressing the need for a convention to revise, alter or amend the Constitution, two-thirds of the members of each house voting for the resolution.[2]

The next step is to submit to the voters at the next general election the question whether there shall be a convention.[3] Just what is meant by "next general election" has been the subject of some dispute. It has been argued that only the biennial November elections are general elections within the meaning of the Constitution, and that the question could not be submitted at a State wide judicial election or any other State wide election except a November election. It is difficult to perceive the force of such an argument. It would seem that "general election" means any State wide election. The present situation, however, does not require an interpretation of the term. The resolution to submit the question of calling a convention to the voters was adopted by the Senate on January 24, 1917, and concurred in by the House of Representatives on March 14, 1917. The next general election is the November election of 1918. No one contends that a

[1] Constitution 1870, Article XIV.

[2] Session Laws 1917, page 805.

[3] The practice of obtaining the popular approval for the calling of a covention may be said to have become almost the settled rule. Thirty-four state constitutions expressly require such a popular expression. The most usual method employed in submitting the question of assembling a convention to a popular vote is the one provided for in Illinois—submission by legislative action. But the constitutions of seven states require the submission of the question at certain regular intervals, independently of legislative action. New Hampshire requires a vote upon the question once every seven years. The New Hampshire Constitution, however, can be amended only by assembling a convention for that purpose. The legislature of that state is not empowered to propose constitutional amendments. This, no doubt, accounts for the short intervals at which the question of calling a convention must be submitted to the voters of that state. Iowa requires the submission of the question once every ten years; Michigan, once every sixteen years; Maryland, New York and Ohio, once every twenty years. The Constitutions of Iowa, New York, Michigan and Ohio also expressly permit the legislatures of these states to submit to the people the question of calling a convention at other than ten, sixteen and twenty year periods. The Oklahoma Constitution of 1907 leaves to the legislature the discretion as to when the question of holding a convention shall be submitted to the people, but requires that the question be submitted at least once in every twenty years.

regular November election is not a general election within the meaning of the Constitution. Because the Constitution provides that the question of holding a convention shall be submitted at the "next general election" following the action of the General Assembly, it is apparent that it would be necessary to define "general election," if a State wide election were to occur between now and the next November election. Since there will be no State wide election before the next regular November election all difficulties concerning the definition of "next general election" are obviated, and the question of calling a convention will be submitted to the voters at the regular election in November, 1918.

The Constitution further provides that in order to authorize the calling of a convention a majority of the voters participating in the election shall vote for a convention. Whether or not this provision is a desirable one is a question that need not now be determined. The Constitution requires a favorable vote by at least a majority of the voters voting at the election and this provision must be complied with. What shall be the basis of determing whether or not the question of calling a convention has received a majority of the votes cast at the election at which it is submitted? The precise constitutional language is: "If a majority voting at the election vote for a convention the General Assembly shall * * * provide for a convention * * *" Let us take a concrete case. At the regular election in 1918 the people will be asked to vote for or against the question of calling a convention. At the same election the people will vote for member of Congress at large, a national officer, and for State Treasurer, a State officer. Suppose that the total number of votes cast for the various candidates for member of Congress at large is 600,000 and that the total number of votes cast for the several candidates for State Treasurer is 500,000. Suppose further that the candidates for no other office receive a total vote equal to that of the candidates for State Treasurer, and that the question of calling a convention receives 275,000 favorable votes. Under such circumstances could it be said that the question had been carried? It might be argued, and with some force, that the framers of the Constitution, in fixing the number of votes necessary to authorize the assembling of a convention, did not have in mind the votes to be cast for national officers but intended that the required majority should be tested by the greatest number of votes cast for a State officer. The Constitution requires a majority voting at the election. To exclude the votes cast for a national officer would be to read into the foregoing provision the words "for State officers." The apparent intention of the framers of the Constitution was to require favorable action by a majority of those participating in the election at which the question is submitted, without regard to the character of the officers to be voted for at the same election. The better view, therefore, appears to be that, in the supposed case, the question of calling a convention, not having received a majority of 600,000 votes, the total number cast for the office of Congressman at Large, failed of adoption.

The third step in the process of assembling a convention must be taken by the General Assembly. The specific constitutional language in this connection is as follows:

> "If a majority voting at the election vote for a convention, the General Assembly shall, at the next session, provide for a convention, to consist of double the number of members of the Senate, to be elected in the same manner, at the same places and in the same districts."

If there is a favorable popular vote on the question of the calling of a convention, the General Assembly, at the session immediately after the election at which such favorable vote was had, shall provide for a constitutional convention "to consist of double the number of members of the Senate to be elected in the same manner, at the same places and in the same districts." There are fifty-one senators in this State. The State is divided into fifty-one senatorial districts, each district electing one senator. A constitutional convention, therefore, will consist of one hundred and two delegates, each senatorial district electing two delegates to the convention.

The Constitution states that "the General Assembly shall, at the next session, provide for a convention * * *" There is no requirement that the General Assembly shall provide for such a convention at the next regular session. The Governor, therefore, immediately after a favorable popular vote, may call a special session of the General Assembly to provide for a convention.

There has been some conflict of opinion as to what is meant by "to be elected in the same manner" as senators. It has been argued that the phrase should be construed so as to include time, which would mean that delegates could not be elected at a special election but must be chosen at a regular November election—the only elections at which senators are selected. This view, however, should not prevail for two definite reasons: (1) Senators are elected for four years but all are not elected at the same time. Senators from senatorial districts bearing odd numbers are elected at one regular November election, while senators from districts with even numbers are elected at the next regular November election.[4] A logical construction of the contention advanced would lead to the absurd conclusion that only a portion of the delegates to a constitutional convention could be elected at one time, the remainder to be elected at the regular November election two years later. It might be answered that there is no need for carrying the contention to a logical conclusion and that all delegates could be elected at the next regular November election at which some senators were chosen, but that answer in itself clearly shows that the phrase "in the same manner" should not be subjected to a strict construction, which is the very basis of the contention. (2) The Constitutions of both 1818 and 1848 provided that delegates to constitutional conventions should be chosen "in the same manner" as certain other officers therein specified. But the delegates to the Conventions of 1847, 1862 and 1869–70 were all elected at elections when the certain other officers were not chosen. The Constitution of 1848 expressly provided that delegates to a convention should be elected "in the same manner" as members of the House of Representatives.[5] The delegates to the Convention of 1869–70, which framed our present Constitution, were elected under that provision but they were not elected in an election at

[4] Constitution 1870, Article IV, Sections 2 and 6.
[5] Constitution 1848, Article XII, Section 1.

which members of the House of Representatives were selected. These delegates, who were not elected at the same time as members of the House of Representatives, although the Constitution then in force provided that they should be elected "in the same manner" as members of the House of Representatives, incorporated into our present Constitution the provision that delegates shall be selected "in the same manner" as senators. If they, themselves, were not selected at the same time as members of the House of Representatives it is clear that they did not intend that delegates to future conventions should be elected at the same time as senators. There is no constitutional objection to the selection of delegates at a special election to be called for that purpose.

But the phrase "in the same manner" does present a serious problem. There would perhaps be little or no dissent from the view that the delegates to a constitutional convention should be nominated by petition and elected in a non-partisan election. A constitutional convention is a body selected for one specific purpose—to alter, revise or amend the Constitution. The absence of politics and party lines in such a body would seem to be highly desirable. Does the foregoing phrase prevent the non-partisan nomination and election of delegates to a convention? (1) Does this phrase mean that only the constitutional provisions relating to the nomination and election of senators are applicable to the nomination and election of delegates? Or (2) does it mean that all existing statutory regulations, as well as all constitutional provisions concerning the nomination and election of senators shall apply to the nomination and election of delegates? An affirmative answer to the first question will enable the non-partisan nomination and election of delegates because the Constitution does not prevent the non-partisan nomination and election of senators. The fact that senators are nominated in primary elections and elected in regular party elections is due entirely to statutory regulation. An affirmative answer to the second question, however, would clearly preclude the possibility of electing delegates in a non-partisan election, unless the General Assembly at the same time provided for the non-partisan election of senators, and probably would make it neccssary to nominate delegates in a primary election.

The Constitution of Ohio provided that delegates to a convention should be selected "in the same manner" as members of the House of Representatives. In providing for the Convention of 1912 the Ohio Legislature took the view that "in the same manner" meant only in the manner prescribed by the Constitution for the election of members of the House of Representatives. The Ohio Constitution did not prevent the non-partisan nomination and election of members of the House of Representatives and the Legislature of that state provided that delegates to the Convention of 1912 should be nominated by petition and that the names of the candidates should be printed on a separate ballot without party designation of any kind. For two reasons, however, it would seem that the view of the Ohio Legislature cannot be sustained in this State, and that "in the same manner," as used in our Constitution, includes all existing constitutional and statutory regulations relating to the nomination and election of senators. 1. Previous legislative action in calling other conventions in Illinois sanctions

this view. The Constitution of 1848 provided that delegates should be elected "in the same manner" as members of the House of Representatives. The General Assembly in providing for the Conventions of 1862 and 1869–70, both of which were held while the Constitution of 1848 was in force, took it for granted that all statutory regulations relating to the election of members of the House of Representatives applied to the election of delegates to those conventions.[6] Primary elections, of course, were unknown at that time. 2. Any other view would render the constitutional language practically insignificant. The Constitution does not determine the manner of electing senators. The places of voting are fixed by statute and the senatorial districts are subject to legislative alteration after each Federal census.[7] It would seem, therefore, that "to be elected in the same manner" means that delegates to a convention shall be nominated and elected in the same manner as senators in so far as the manner of nominating and electing senators is prescribed both by the Constitution and statute at the time of providing for the election of delegates.

It should be noted, however, that two decisions of the Supreme Court of Illinois, in a measure, tend to support the attitude taken by the Ohio Legislature that "elected in the same manner" as members of the House of Representatives means only in the same manner that the election of members of the House of Representatives is prescribed by the Constitution, thus excluding the operation of any statutes concerning the election of members of the lower house.[8] Let us consider one of these decisions. In Scown v. Czarnecki the court was called upon to determine the constitutionality of the Woman Suffrage Act of 1913.[9] The Constitution expressly limits the right of suffrage to males.[10] The Woman Suffrage Act gave women the right to vote for the candidates for certain offices created not by the Constitution but by statute. It was clear that the General Assembly had no power to authorize women to vote for officers created by the Constitution or on any question required by that instrument to be submitted to the voters because of the express constitutional limitation concerning the right of suffrage. But the Act of 1913 did not give women the right to vote for constitutional officers. The General Assembly carefully refrained from doing that and gave women the right to vote for only such officers as were created by statute. A clear issue as to whether or not the constitutional limitation with reference to suffrage applied to persons voting for officers created by statute was thus presented. If it did, the Act of 1913 was invalid. If it did not, the act was valid. The court upheld the act on the ground that the limitation of suffrage to men by the Constitution had application only to persons voting for officers created by that instrument. The court declined to extend the limitation beyond the terms of the Constitution. If a limitation as to suffrage does not extend beyond the terms of the Constitution, then the phrase "in the same manner" should not be extended beyond the terms of the Constitution so as to include statutory regulations concerning the election of certain officers. By analogy, the case of Scown

[6] Public Laws 1861, page 84; Public Laws 1869, page 97.
[7] Constitution 1870, Article IV, Section 6.
[8] Plummer v. Yost, 144 Ill. 68 (1893), page 74; Scown v. Czarnecki, 264 Ill. 305 (1914).
[9] Session Laws 1913, page 333.
[10] Constitution 1870, Article VII, Section 1.

v. Czarnecki supports the view of the Ohio legislature that "in the same manner" as members of the House of Representatives does not mean that, in an election for delegates, all statutory regulations for the election of members to the lower house of the State Legislature must be observed.

There are cases, however, which conflict with the general rule announced in the Illinois woman suffrage case to the effect that constitutional limitations must not be extended beyond the terms of the Constitution. Primary elections were unheard of in 1870 when the present Constitution was framed. The framers of the Constitution made no provision with reference to such elections. Primary elections are pure statutory innovations. But the Supreme Court of this State has held that primary elections are elections within the meaning of the word "election" as used in the Constitution, and that all constitutional provisions relating to elections are applicable to primary elections.[11] In these cases the court extended the constitutional provisions concerning elections beyond the terms of the Constitution so as to include primary elections, pure statutory creations. If the word "election" as used in the Constitution includes statutory primary elections, why should not "elected in the same manner as senators" include all statutory regulations concerning the election of senators? It cannot be said that the view of the Ohio Legislature has received judicial sanction in this State.

It would seem that all statutory regulations applying to the final election of senators must also apply to the election of delegates. It must be admitted, however, that the problem presented is a perplexing one. But the question whether or not all statutory regulations relating to the nomination of candidates for senators are applicable to the nomination of candidates for delegates is even more perplexing. Senatorial candidates today are nominated in primary elections. If the Primary Election Law is not repealed, would it be necessary to nominate candidates for delegates in a primary election? The Constitution provides that delegates shall "be *elected* in the same manner" as senators. The Constitution makes no provision concerning the nomination of candidates for delegates unless nomination is included within the meaning of the word "elected." To say that "elected" includes nomination is to go a step further than to say that the word includes all statutory regulations concerning the final election of senators. If "elected" applies only to the final election of delegates the General Assembly may dispense with primary elections for the nomination of candidates for delegates and provide any other method for their nomination not otherwise in conflict with the Constitution. If "elected" includes nomination, then candidates for delegates must be nominated in the manner then provided by law for the nomination of senatorial candidates. It is clear that if the view of the Ohio Legislature, previously commented on and, by analogy, supported by the case of Scown v. Czarnecki, is adopted, the General Assembly of this State, not being limited by any constitutional provision concerning the nomination of senatorial candidates, may disregard any statutory regulations con-

[11] People ex rel. Breckon v. Election Commissioners, 221 Ill. 9 (1906); Rouse v. Thompson, 228 Ill. 522 (1907), page 541; People ex rel. Phillips v. Strassheim, 240 Ill. 279 (1909), page 296; People ex rel. Espy v. Deneen, 247 Ill. 289 (1910), page 296.

cerning the nomination of senatorial candidates and prescribe any method of nominating candidates for delegates not in conflict with other provisions of the Constitution. But the Supreme Court, in the primary election cases, has held that primary elections are elections within the meaning of the Constitution. Since primary elections are statutory methods of nominating candidates for office, it would seem that nomination of candidates for delegates is included within the meaning of "to be elected in the same manner," and that candidates for delegates must be nominated in the manner then provided by law for the nomination of senatorial candidates.

Whether or not statutory regulations concerning the nomination and election of senators must govern the nomination and election of delegates is a question that is not free from doubt. It is possible that the General Assembly could provide for the non-partisan nomination and election of delegates without modifying any of the present statutory provisions relating to the nomination and election of senators. Yet it would be highly unsafe for the General Assembly to provide for the nomination and election of delegates in any manner other than that then provided for the nomination and election of senators.

The constitutional provisions relating to the qualifications of delegates to a convention should be noted. The Constitution provides that "the qualification of members shall be the same as that of members of the Senate * * *" The constitutional qualifications of senators are prescribed in the following manner:

> "No person shall be a senator who shall not have attained the age of twenty-five years, or a representative who shall not have attained the age of twenty-one years. No person shall be a senator or representative who shall not be a citizen of the United States and who shall not have been for five years a resident of this State, and for two years next preceding his election a resident within the territory forming the district from which he is elected. No judge or clerk of any court, Secretary of State, Attorney General, State's attorney, recorder, sheriff, or collector of public revenue, members of either house of Congress, or persons holding any lucrative office under the United States or this State, or any foreign government, shall have a seat in the General Assembly: *Provided*, that appointments in the militia, and the offices of notary public and justice of the peace, shall not be considered lucrative. Nor shall any person holding any office of honor or profit under any foreign government, or under the government of the United States, (except postmasters whose annual compensation does not exceed the sum of $300.00) hold any office of honor or profit under the authority of this State.
>
> "No person who has been, or hereafter shall be convicted of bribery, perjury or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the General Assembly, or to any office of profit or trust in this State."[12]

[12] Constitution 1870, Article IV, Sections 3 and 4.

Delegates, therefore, must be twenty-five years of age, citizens of the United States, residents of this State for five years, and residents of the districts from which they are elected for two years next preceding their election. No person, holding any lucrative office under the United States, this State or any foreign government can be a delegate. Any person convicted of an infamous crime or who is withholding public funds is ineligible.

Are members of the General Assembly eligible to membership in a convention? A broad interpretation of the foregoing provisions of the Constitution would make senators or representatives in the lower house ineligible as delegates. The Constitution clearly excludes from the General Assembly any person holding a lucrative office under this State. When the framers of the Constitution provided that delegates should have the same qualifications as senators it would seem that they intended to exclude from the membership of a convention any person holding a lucrative office under this State. A member of the General Assembly is a holder of a lucrative office and, under such an interpretation, would be excluded from membership in a convention. It must be admitted, however, that a technical construction of the preceding constitutional provisions would permit members of the General Assembly to become delegates to a convention. The Constitution states that no person holding a lucrative office under this State shall be eligible as a member of the General Assembly. As applied to members of the General Assembly "lucrative office" must mean lucrative office other than membership in the General Assembly. If that were not so, no person could be eligible to membership in the General Assembly. The Constitution then provides that delegates to a convention shall have the same qualifications as senators who are members of the General Assembly. No person can be a senator who is the holder of any lucrative office under this State *other than membership in the General Assembly*. Since delegates must have the same qualifications as senators, it would seem that no person can be a delegate who is the holder of any lucrative office under this State *other than membership in the General Assembly*. As applied to senators "lucrative office" must be modified by the words "other than membership in the General Assembly." If "lucrative office" is modified in the same manner when applied to delegates, then it is clear that members of the General Assembly are not ineligible as delegates to a convention.[13]

"The General Assembly shall, in the Act calling the convention, designate the day, hour and place of its meeting * * *" "Said convention shall meet within three months after such election * * *" The Constitution thus confers broad discretionary powers upon the General Assembly concerning the time and place of assembling the convention. In fact the power of the General Assembly in this connection is limited only in one respect. Under the Constitution the General Assembly must direct the assembling of the convention within three months after the election of the delegates. But when shall the

[13] The Constitution of Michigan (1850), Article 4, Section 18, prohibited members of the legislature, during their term of office, from receiving any civil appointment. In Fyfe v. Kent County Clerk, 149 Mich. 349 (1907), it was held that the office of delegate to a constitutional convention was a "civil appointment" within the meaning of Article 4, Section 18, and a state senator was denied the right to become a candidate for delegate to the Michigan Constitutional Convention of 1907-08. See, also, Lodge v. Wayne County Clerk, 155 Mich. 426, (1909), and Murtha v. Lindsay, 187 Mich. 79 (1915).

delegates be elected? The Constitution provides that, if the voters favor a convention, the General Assembly at its next session shall provide for a convention "to consist of double the number of members of the Senate." The date of the election of delegates is left to the discretion of the General Assembly. Could the General Assembly, in the event of a favorable vote by the people, indefinitely postpone the election of delegates? Suppose that the majority of the electors in November, 1918 should vote for a convention. Could the General Assembly, which will convene in January, 1919, in providing for the convention, fix the date of the election of delegates in November, 1921? Could it postpone the election of delegates to November, 1922? Apparently it could. The Constitution places no restrictions on the power of the General Assembly to fix the date for the election of delegates. And this would seem to be true even though postponement of the election of delegates to 1922 would be a postponement beyond the term of the General Assembly convening in January, 1919.

"The General Assembly shall, in the Act calling the convention * * * fix the pay of its members and officers * * *" The Constitution does not limit the power of the General Assembly to fix the compensation of the delegates. How much compensation should delegates to a constitutional convention receive? Upon what basis shall their compensation be ascertained? There has been more or less discussion concerning these questions and three views have been advanced: (1) that delegates should be paid on a *per diem* basis; (2) that they should receive a *per diem*, not to extend beyond a certain fixed date; and (3) that they should receive a lump sum payment for their services. The objection to the first view is that it tends to encourage the unnecessary prolongation of the convention's sessions. The second view is objectionable because it may lead to hasty and ill-considered work. If the *per diem* ceases after a certain date the members of the convention will seek to conclude their labors on or before that date. This might operate to preclude mature deliberation, a result always to be avoided. Of course it is possible that a convention, being unable to complete its work on or before the date when the *per diem* ceases, would continue in session even after that date.[14] With respect to the first two views it may be observed that, in making provision for the compensation of delegates, it is unwise to encourage continuance in session longer than is necessary, or to limit the time required for effective deliberation. It should be noted, however, that the delegates to the Conventions of 1847, 1862 and 1869–70 received a *per diem* for each day that the conventions were in session—that is, the *per diem* did not cease on and after a certain date.[15]

The plan of allowing delegates a lump sum for their services seems to be the most satisfactory of the three plans put forward. It clearly meets the objection presented by the first plan. Whether or not it disposes of the objection to the second plan is not so clear. It might be said that delegates, realizing that they would receive the same compensation whether they were in session ten days or one hundred days, would have no interest in their work and would seek to adjourn at

[14] The New York, Alabama and Michigan Conventions, held in 1894, 1901 and 1907-8, respectively, all continued in session beyond the time fixed for compensation to cease.
[15] Public Laws 1846-47, page 35; Public Laws 1861, page 85; Public Laws 1869, pages 98 and 99.

the earliest possible moment. However, delegates who are to receive a lump sum compensation would be more apt to render efficient service than delegates receiving a *per diem* not to extend beyond a certain fixed date. A lump sum payment of $1,000 for service as a delegate would probably be fair compensation, although part of the payment should be postponed until the completion of the convention's work. The Michigan Constitution provides that: "Each delegate shall receive for his service the sum of one thousand dollars and the same mileage as shall then be payable to members of the legislature but such compensation may be increased by law."[16]

"The General Assembly shall * * * provide for the payment of the * * * expenses necessarily incurred by the convention in the performance of its duties." What are necessary expenses? Expenses for stationery and printing would, of course, be proper charges. The salaries of doorkeepers, clerks and stenographers would also be classed as necessary expenses. In fact, any expense reasonably calculated to assist the work of the convention would be proper, and the General Assembly is charged with the duty of providing for the payment thereof.

The concluding sentence of section 1, Article XIV, is as follows:

> "Said convention shall meet within three months after such election and prepare such revision, alteration or amendments of the Constitution as shall be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two or more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendments shall take effect."

The Constitution requires that the work of a convention, before becoming operative, shall be sumitted to and approved by the voters. Subject to one limitation the convention has full power to appoint or designate the day on which an election shall be held to vote for or against the adoption of its work. That limitation is found in the constitutional provision that the election, at which the "revision, alteration or amendments of the Constitution" prepared by the convention is to be submitted, shall be held "not less than two or more than six months after the adjournment" of the convention. A convention could submit its work at a special election to be called by it for that purpose or at a general election, provided, of course, that such general election occurred "not less than two or more than six months after the adjournment" of the convention. Should the work of a convention, if possible, be submitted at a general election? To do so would be to save the expense of a special election. But, for two reasons, it would appear that the better plan is to submit the work of a convention at a special election.

(1) Submission at a special election, by precluding a complication of issues, will tend to obviate confusion on the part of the voter. In a special election the only issue before the voter would be whether or not the work of the convention should be ratified. In a general election

[16] Constitution, Michigan, Article XVII, Section 4.

he would be called upon to familiarize himself not only with the constitutional changes proposed by the convention but with such other questions as might be submitted at the same election and with the qualifications of the several candidates for office. Obviously more intelligent and concentrated action by the voter with respect to the work of a convention can be obtained by submission at a special election.

(2) The Constitution provides that "unless * * * approved by a majority of the electors voting at the election, no such revision, alteration or amendments shall take effect." To become effective, proposed constitutional changes or alterations, which are submitted at a general election, must receive a majority of the votes cast not only for and against the proposed changes or alterations but a majority of all votes cast in the election, whether for candidates for office or otherwise. A majority of the votes cast for and against such changes and alterations will suffice for their adoption if they are submitted at a special election. Previous experience under the present voting system has demonstrated the difficulty of obtaining favorable action by a majority of the voters on proposed constitutional changes when such changes are submitted at a general election. The primary interest of the voters, in a general election, is in the candidates for office. Many voters would fail to vote one way or the other on proposed constitutional changes, if submitted at a general election. And, since the Constitution declares that no proposed changes in the instrument shall take effect unless approved by a majority of those participating in the election, a failure to vote one way or the other would be equivalent to a vote against the proposed changes. If the work of a convention is submitted at a special election, there is less likelihood of its failing of ratification; at any rate, it would not be rejected by the unintentional negative votes of those who have no interest in the matter. In a special election the only question before the voters whould be whether or not the work of the convention should be ratified. Persons who have no interest in the work of the convention would not participate in the special election. If the work of the convention were rejected by the voters in the special election it would be rejected because the people did not approve of it, and not because many persons who had no interest in the work voted against it without knowing that they were doing so.

How shall the work of a constitutional convention be submitted to the voters? The Constitution provides that "such revision, alteration or amendments of the Constitution" shall be submitted to the electors but does not prescribe the manner of submission. In so far as the Constitution is concerned the convention is free, therefore, to submit its work according to any plan which it sees fit to adopt.[17]

[17] Legislatures have sometimes sought to control the manner of submission. The legislative act providing for the Michigan Convention of 1907-08 required the work of the convention to be submitted in the form of a revised constitution. (Public Acts, Michigan, 1907, page 348). The act of the Illinois General Assembly providing for the Convention of 1869-70 required amendments to the constitution to be submitted separately "unless the convention shall be of the opinion that is it impracticable." (Public Laws, Illinois, 1869, page 99). In 1917 the legislature of Indiana passed an act to provide for the assembling of a constitutional convention and the election of delegates. Under the terms of the act the convention was to consist of 115 delegates. And it was further provided that "upon demand of forty-five (45) delegates any question submitted to the legal voters by the convention shall be submitted separately." (Acts of Indiana, 1917, page 5). Section 7 of the Act of the General Court of New Hampshire providing for the convention which is to assemble in that state on June 5, 1918, is as follows: "If alterations or amendments to the constitution shall be agreed to by said convention, they shall be so arranged and prepared that the same can be voted on by the people separately, unless the convention shall be of the opinion that

There are three general plans of submission. The convention may submit (1) a series of amendments to the existing Constitution, each to be voted on separately; (2) a complete new Constitution; or (3) a complete new Constitution together with distinct propositions to be voted on separately. The first plan is unobjectionable if only a few amendments are to be voted upon. The Massachusetts Convention of 1917 proposed three amendments to the Constitution of that state. At the election in November, 1917, these amendments were submitted to the voters of Massachusetts as separate propositions. Under the circumstances there could be no objection to the plan of submission adopted by the Massachusetts Convention of 1917. It would have been absurd to submit a revised Constitution when only three changes in the existing instrument were proposed. The submission of a number of separate amendments to an existing Constitution, however, is apt to lead to confusion. The voters cannot be expected to familiarize themselves with more than a few amendments. But it should be remembered that this plan has been employed on a number of occasions. The Ohio Convention of 1912 submitted to the people forty-two separate amendments to the Constitution and apparently the plan worked out satisfactorily. Thirty-four of the proposed forty-two amendments were adopted.

The second and third methods of submission should be adopted only in the event that the convention proposes to revise somewhat thoroughly the existing Constitution. In that event the objection to the second plan is that it precludes the separate submission of propositions in which the public generally is interested. An illustration will serve to make this objection clear. Woman suffrage and prohibition are issues arousing general interest in this State, although prohibition, because of the proposed amendment to the Constitution of the United States, is now a question for the General Assembly rather than a convention. Suppose, however, that a convention in completely revising the present Constitution should also adopt provisions granting women full voting privileges and favoring State wide prohibition. Obviously, the provisions relating to woman suffrage and prohibition would attract more attention than many of the other proposed changes, and for that reason should be submitted to the voters separately. Moreover, if provisions involving issues of general interest are submitted as a part of a complete revised Constitution, the whole instrument may go down to defeat because of the opposition to the particular provisions, although the voters may have favored all other constitutional changes proposed by the convention. Suppose that a convention in this State besides proposing some thirty-five or forty changes in the present Constitution should adopt a provision favoring State wide prohibition and determine to submit all changes, including the prohibition provision, as a complete new Constitution. All voters who

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it is impracticable so to prepare and arrange them, in which case the amendments shall be voted on together; and in either case the convention shall prescribe the mode of publication of the amendments, the time and manner in which the same shall be submitted to the people for their approval, and may pass an ordinance in relation to the manner of ascertaining their decision and declaring and publishing the same, the time when such amendments as shall be approved shall take effect, and may do any and all other things which they deem necessary to carry out the purpose and object of such convention." (New Hampshire Laws, 1917, page 610). It would seem that, under the Illinois Constitution, the General Assembly has no power to prescribe the manner of submitting the work of a convention to the people. In any event, however, a convention should have the right to determine the form in which its work shall be submitted.

were opposed to prohibition would probably vote against the new Constitution, even though they favored every other proposed change. If a majority of the voters were opposed to prohibition, it would probably mean that the whole of the convention's work would be defeated, regardless of the attitude of the voters as to all other proposed changes. On the other hand if the voters are permitted to vote separately on the prohibition proposition, the feeling of the voters toward that proposition would have no effect on the other proposed changes. The prohibition provision might be overwhelmingly defeated while the other proposed changes would carry by a substantial majority. The New York Convention of 1915 submitted its work as a complete new Constitution, together with two separate provisions. The whole of its work failed of adoption. It has been said, and perhaps with some truth, that the defeat of the New York Convention's work was due to the fact that certain provisions involving popular issues were incorporated in the complete Constitution, and not submitted separately. The theory is that a majority of the voters being opposed to the view taken by the convention with respect to these popular issues voted against the complete Constitution, not because they disapproved of all proposed changes but because they were denied the privilege of voting separately on the propositions relating to one or more of these issues. The Michigan Convention of 1907–08, however, submitted its work as a revised Constitution without the submission of any independent propositions to be voted on separately. And the revised Constitution proposed by the Michigan Convention was ratified by the voters of that state on November 3, 1908. Apparently, however, the constitutional changes proposed by the Michigan Convention presented no distinct issues of general interest such as would be presented in this State by proposed changes favoring prohibition or woman suffrage.

The third plan of submission seems to be the most desirable except in cases where but a few amendments are to be voted upon. It meets the objections urged to the first two plans. By incorporating in a complete Constitution all proposed changes, which do not relate to questions that might be termed "popular issues," confusion on the part of the voter is, to a large extent, avoided. By submitting separately all propositions in which the public generally is interested, the voter is given some discretion in the matter and the fate of the whole of the convention's work is not made to depend on the attitude of the voters with respect to one or two issues. This plan was adopted by the Illinois Conventions of 1848 and 1869–70. The Convention of 1869–70 submitted to the voters a complete new Constitution and eight independent propositions to be voted on separately. The new Constitution and all of the separate propositions were ratified by the voters at a special election on July 2, 1870.

The number of changes to be proposed depends to some extent on the character of the instrument to be revised or amended. The necessity for numerous changes in a Constitution which contains but few detailed provisions will seldom arise. Such is the case with the Constitutions of Massachusetts and New Hampshire. These instruments contain practically no detailed provisions. Conventions in those states have rarely found it necessary to propose a large number of

constitutional changes.[18] On the other hand, a convention assembled for the purpose of revising or amending a Constitution which contains many detailed provisions will ordinarily find it necessary to propose a large number of changes in the instrument. This is due to the fact that details require more frequent change than fundamental principles. The necessity for numerous changes, irrespective of the character of the Constitution to be revised, is unavoidable, of course, if the instrument, in general, is unsatisfactory.

To assemble a convention and submit its work to the people, under the present Constitution, requires action by the voters on three different occasions. (1) The voters must vote on the question as to whether or not there shall be a convention. (2) They must vote for delegates to the convention. (3) They must vote for or against the work of the convention. Who may vote in these elections? Are women qualified electors in any of these elections? Under the Constitution the right to vote is expressly limited to men.[19] The Woman Suffrage Law of 1913 gave women the right to vote for certain officers not created by the Constitution "and upon all questions or propositions submitted to a vote of the electors of * * * municipalities or other political subdivisions of this State."[20] The Act of 1913 was assailed on the ground that it violated the constitutional provision limiting the right of suffrage to males. In sustaining the act the Supreme Court held that the constitutional limitation of the right of suffrage to males applied only to persons voting for officers created by the Constitution or on questions required by the Constitution to be submitted to the voters and that, therefore, the General Assembly could prescribe such qualifications as it saw fit for persons voting for officers created by statute or on questions not required by the Constitution to be submitted to the voters.[21] But the court expressly held that the clause "and upon all questions or propositions submitted to a vote of the electors of * * * municipalities or other political subdivisions of this State" was broad enough to include all referendum elections provided for by the Constitution and to that extent was unconstitutional. The clause was upheld, however, in so far as it applied to questions or propositions required to be submitted to the electors not by the Constitution but by statute. Delegates to a convention are officers created by the Constitution. The electors are required by the Constitution to vote on the question of calling a convention and that instrument also requires the submission of the convention's work to the voters. It is clear, therefore, that, under the Constitution, as interpreted by the Supreme Court, women have no right to vote at any stage of the proceeding with reference to the assembling of a convention or the submission of its work to the voters.

[18] The Massachusetts Convention of 1853 proposed thirty-five constitutional changes, all of which, however, were rejected by the voters.
[19] Constitution 1870, Article VII, Section 1.
[20] Session Laws 1913, page 333.
[21] Scown v. Czarnecki, 264 Ill. 305 (1914).

THE ORGANIZATION AND PROCEDURE OF A CONVENTION.

1. ORGANIZATION.

The General Assembly shall "in the Act calling the convention, designate the day, hour and place of its meeting." With two exceptions the Constitution makes no further express provision concerning the organization of a convention. The Constitution provides that the delegates shall take an oath before proceeding with their duties and that vacancies shall be filled in the manner provided for filling vacancies in the General Assembly. The constitutional provisions with reference to these matters are as follows:

> "Before proceeding, the members shall take an oath to support the Constitution of the United States and the State of Illinois, and to faithfully discharge their duties as members of the convention. The qualification of members shall be the same as that of members of the Senate, and vacancies occuring shall be filled in the manner provided for filling vacancies in the General Assembly."

The Constitution prescribes the form of the oath to be taken and subscribed by the members of the General Assembly and designates the officer who shall administer the oath to the members.

> "Members of the General Assembly, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: 'I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Illinois, and will faithfully discharge the duties of Senator (or Representative) according to the best of my ability; and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person for any vote or influence I may give or withhold on any bill, resolution or appropriation or for any other official act.'
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> "This oath shall be administered by a judge of the Supreme or circuit court in the hall of the house to which the member is elected, and the Secretary of State shall record and file the oath subscribed by each member. Any member who shall refuse to take the oath herein prescribed shall forfeit his office, and every member who shall be convicted of having sworn falsely to, or of

violating his said oath, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in this State." [1]

The Constitution does not prescribe the form of the oath to be taken by delegates to a convention. It merely requires them to take an oath to support the Constitution of the United States, the Constitution of the State of Illinois, and to faithfully discharge their duties as members of the convention. Nor does the Constitution designate the officer to administer the oath to the delegates. It is interesting to note in this connection that the acts of the General Assembly providing for the Conventions of 1847, 1862 and 1869–70, although requiring the delegates to take an oath, did not prescribe the form of the oath or designate the officer who should administer the oath. [2]

The question of filling vacancies in the membership of a convention presents no difficulty. The Constitution provides that such vacancies shall be filled "in the manner provided for the filling of vacancies in the General Assembly." The constitutional provision relating to the filling of vacancies in the General Assembly is as follows:

"When vacancies occur in either house, the Governor, or person exercising the powers of Governor shall issue writs of election to fill such vacancies." [3]

The Constitution does not fix the number of delegates necessary to constitute a quorum. It does not prescribe the rules of procedure to govern the convention. It designates no person or body to act as the judge of the election, returns and qualifications of the delegates and makes no provision concerning the selection of the officers of the convention. The acts of the General Assembly authorizing the Conventions of 1847, 1862 and 1869–70 provided that the members of the conventions should be the judges of their own privileges and elections and gave them the power to select the officers of the conventions and such employees as might be deemed necessary. Heretofore no attempt has been made by the General Assembly to fix the number of delegates necessary to constitute a quorum or to prescribe rules of procedure for a convention. The provisions of the act authorizing the Convention of 1869–70 in this regard were similar to the acts providing for the two preceding conventions, and were as follows:

"The said members shall be the judges of their own privileges and elections and shall be entitled to the same privileges to which members of the General Assembly are entitled. They shall elect one of their number president, and may appoint one or more secretaries, and such doorkeepers and messengers as their convenience shall require." [4]

Obviously the foregoing provisions were merely declaratory and imposed no restrictions on the power of the convention to fix its quorum, determine its own membership and prescribe its rules of procedure. It has been the general practice in this State to leave to constitutional conventions a free hand in perfecting their organization and prescribing

[1] Constitution 1870, Article IV, Section 5.
[2] Laws of Illinois 1846-47, page 33; Laws of Illinois (Public) 1861, page 84; Laws of Illinois (Public) 1869, page 97.
[3] Constitution 1870, Article IV, Section 2.
[4] Laws of Illinois (Public) 1869, page 98; see also Laws of Illinois 1846-47, page 35, and Laws of Illinois (Public) 1861, page 85.

their rules of procedure. And it is a policy that should be continued. A convention is a body elected by the people for a specific purpose. Its members will be responsible to the people for its work. It should not be hampered, therefore, by rules or regulations adopted by another body. It should be observed, however, that, in some instances, the legislatures of other states in providing for constitutional conventions have sought to regulate in some detail their organization and procedure.

2. PROCEDURE.

The present Constitution of Illinois does not determine the manner in which a constitutional convention shall proceed, and such procedure should not be fixed by legislative act. However, it may be proper to discuss briefly some of the principal points involved in the procedure of a constitutional convention.

The procedure to be adopted by a convention must be determined, of course, by the specific work which the convention is to undertake, and also by the composition of the convention itself. Where a convention is composed of a very large number of delegates its procedure will vary somewhat from that of a body composed of a smaller number. For example, the New Hampshire Convention of 1912 had 416 delegates, and the Massachusetts Convention of 1917, 320 delegates. So large a body is much too cumbersome for the purpose of framing or revising a Constitution, and Illinois is fortunate in that a constitutional convention will be composed of but 102 members.

If a convention intends merely to propose a few amendments to the Constitution, as has several times been the case in New Hampshire, the procedure should naturally differ from that in a convention which proposes to submit a complete revision of the Constitution, or at least to scrutinize carefully all provisions of an existing Constitution. For example, if a convention is to confine itself to but a few distinct proposals, it is unnecessary to organize a committee system covering the whole field of provisions contained within the Constitution.

The problems of convention procedure are, of course, in many respects the same as those of procedure in an ordinary legislative body. However, there are several distinctions which should be borne in mind. A constitutional convention is a body in which political considerations should not be so prominent as they usually are in legislative bodies. Moreover, the function of a convention is different from that of a regular legislative body. With delegates elected by the people for a specific purpose, and with its work submitted to the people for approval, the check that comes from the existence of a bicameral organization is, of course, absent. A legislative body must within a session devote itself to numerous proposals of legislation, all of which are temporary in character, at least in that they may be repealed or altered by a succeeding legislative body. A constitutional convention, however, is confining itself to a single document, whose provisions are more permanent in character. A convention will ordinarily devote to the proposal of changes in a Constitution as much time as is given by an ordinary session of the Legislature to several hundred distinct legislative enactments. The Ohio Convention of 1912 sat from January

9, to June 7, and had a formal meeting again on August 26, holding during this period eighty-three daily sessions. With seventy-two daily sessions the Michigan Convention of 1907–08 extended from October 22, 1907, to March 3, 1908.

The peculiar functions of a constitutional convention lead necessarily to a type of parliamentary procedure which would be inappropriate for ordinary legislative bodies.

With a single specific object before it, a convention should adopt rules primarily for the purpose of accomplishing the following purposes: (1) to obtain full debate upon and deliberate consideration of each proposal of constitutional change; (2) to assure that every important proposal is disposed of only in accordance with the affirmative wishes of the convention; and (3) to have the work of revision or amendment carefully phrased for submission to the people, without an undue prolongation of the session of the convention.

In a convention, as in a legislative body, the organization of committees is the most essential problem. In the framing of a Constitution it may be possible for a convention to conduct all of its work directly in convention, that is, acting as a body without going into committee of the whole or dividing the work among committees. But such a plan would be cumbersome and unsatisfactory, and has not been employed. In the use of committees, we may say that conventions have employed three methods: (1) the transaction of business mainly in committee of the whole, with perhaps some smaller committees appointed to handle particular matters; (2) the appointment of one small committee with power to draft a proposed Constitution and submit it for the consideration of the whole convention, either in committee of the whole or otherwise; (3) the appointment of a number of committees and the apportionment among them of the subjects to be covered by the Constitution, such committees to report to the convention, as such, or to the convention in committee of the whole.

The more usual practice has been for a convention to appoint a number of committees and to distribute among them the several parts of the Constitution, to be considered and reported upon to the convention either in regular session or in committee of the whole. The number of committees appointed for such a purpose has varied considerably, running from four in one case to more than thirty in others.

The number of committees will, of course, vary with the work to be done by a convention, but if all parts of a Constitution are to be examined with care there should be a separate committee for each important subject. Separate committees will also be necessary to deal with questions which are at the time of great popular interest, because an effort will naturally be made to have these subjects dealt with in the Constitution. For example, should a convention be assembled in Illinois, it would be appropriate to have separate committees upon taxation and the initiative and referendum. The New York Convention of 1894 had thirty-one committees; the New York Convention of 1915, thirty committees; the Virginia Convention of 1901–02, sixteen committees; the Michigan Convention of 1907–08, twenty-nine committees; the Ohio Convention of 1912, twenty-five; the Massachusetts Convention of 1917, twenty-four. The Illinois Convention of 1869–70

had thirty-nine committees, a number much larger than was needed. Of these committees six made no report whatever to the convention. A much more satisfactory distribution of work could have been made in the Illinois Convention of 1869–70 had there been fewer committees; for example, there were separate committees on canals and canal lands, internal improvements, roads, and internal navigation, which might well have been consolidated into one; and in several cases there were two separate committees to deal with closely related subjects, both of which were relatively unimportant from a constitutional standpoint. Upon the proper organization of committees and a proper distribution of work among them depends to a large extent the success of a convention.

The size of committees must, of course, vary. The number and size should be such that each member may have some committee service, but each member should not be so burdened as to serve upon four committees, as in Illinois in 1869–70; somewhat the same situation existed in the Ohio Convention of 1912. The size of a committee must depend somewhat upon the function which it is to perform. For a convention there may be said to be three types of committees: (1) those on the formal business of the convention, such as committees on rules and printing, etc.; (2) those whose functions are largely technical, such as a committee on arrangement and phraseology; (3) those whose function would be largely that of obtaining agreement upon broad questions of principle, such as might be to a large extent a committee dealing with the subject of municipal home rule. Of course, most committees will have duties of all three types, but some difference in size is justified. Committees of the first type should naturally be small; those of the second type may well be larger, but even for the third type committees having many more than nine members are not apt to work very effectively. The average size of committees in the Illinois Convention of 1869–70 was nine; the average size of committees in the Ohio Convention of 1912 was seventeen, and because of this the committee work was less effective than it might have been.[5] There is always a tendency to organize either a legislative body or a convention into too many committees and into committees each of which is too large for effective work. In the New York Convention of 1915 a large number of the committees had seventeen members each, and in the Massachusetts Convention of 1917 most of the committees were composed of fifteen members.

Committees are, of course, organs of the convention, appointed for the purpose of maturing matters for consideration by that body. A committee should, therefore, at all times be subject to control by a majority of the convention, and should have no power (by failing to report upon any matter) to prevent its consideration by the convention. Abuse of committee power is not apt to occur in a convention, but the rules should be so framed as to prevent the possibility of such abuse. In the New York Convention of 1894 there was the following rule: "Whenever a committee shall have enacted adversely on any proposed amendment to the constitution such committee need not report such adverse determination, unless requested in writing by the

[5] See remarks of a delegate in Ohio Legislative History 1909-13, pages 424-25.

member introducing such amendment so to do and it was determined [by the committee] in the affirmative." However, in this convention any matter might be recalled from a committee by the majority action of the convention, and a similar rule for recalling matters from a committee existed in the Michigan Convention of 1907–08, the New York Convention of 1915, and the Alabama Convention of 1901–02. In the Michigan Convention of 1907–08 there was a rule that "all standing committees before reporting adversely on any proposal shall notify the member presenting such proposal when and where he may meet such committee to explain the same." In the Ohio Convention of 1912 there was a rule which read as follows: "Any time after two weeks from the time when the convention shall have committed any proposal to any committee, a report thereon in the meantime not having been made by said committee, the author of such proposal may, when no other business is pending and in any order of business, demand that such proposal be reported back to the convention; and such demand when so made shall be deemed the action of the convention, and the proposal is at once before the convention subject to all rules of procedure as before. Provided, however, that this shall not apply to a member whose proposal has passed its second reading and has been referred [to the committee on arrangement and phraseology]. The convention by a majority vote may demand the forthwith report of any proposal that has been committed to any committee."

In the Arizona Convention of 1910 committees were required to report upon each proposal referred to them within eight days after the day of reference, unless otherwise ordered by the convention. In Massachusetts in 1917 all proposals of amendment were required to be submitted to the convention by June 25, and all committees were required to file their reports upon such proposals of amendment by July 16. The New York Convention of 1915 regarded it as sufficient to require that "the several committees shall consider and report without unnecessary delay upon the respective matters referred to them by the convention." As a safeguard with respect to committees the Ohio rule, referred to in the preceding paragraph, may be desirable, although little use will probably be made of it. The Arizona rule is unwise. Upon any important matter a number of proposals will be introduced and referred to a committee. The committee in framing a proposed constitutional provision upon the matter should consider all the proposals, and should report upon the matter as a unit. Any rule requiring a report upon each separate proposal within a limited time would greatly handicap the work of committees.

In this connection it should be suggested that the form of committee proceedings and of committee reports ought to be left to the committees themselves. It has been urged in some conventions that committees should confine their reports to recommended clauses or articles without giving reasons for such recommendations. Where a recommendation relates to a change in existing constitutional provisions explanation is, however, usually desirable and should be given. A committee report should in all cases indicate what changes in an existing constitutional provision are being recommended.[6]

[6] Jameson's Constitutional Conventions, Fourth Edition, 295-298; Debates and Proceedings, Illinois Convention of 1869-70, I, 146.

Committees have ordinarily been appointed by the president of the convention, and this is the more satisfactory arrangement. As has been suggested, partisanship should be absent from the deliberations of a convention, but this, unfortunately, is not always the case, and where the person chosen as president is elected because of distinct partisanship the power of appointment is apt to be abused. In the Nex Mexico Convention of 1910 the person chosen as president was a railroad attorney, and apparently because of the fear that the convention might be charged with being under the control of corporations the appointment of committees was vested in a committee chosen by the convention itself. In the Ohio Convention of 1912 Mr. Bigelow, who was elected president, was known as a pronounced advocate of the initiative and referendum and of the single tax. It was urged, largely for this reason, that the appointment of committees should be vested in a committee, the delegates from each congressional district to select one member of this committee. Mr. Bigelow urged that such a plan would lead to suspicion and disorganization and promised to act fairly if the appointment of committees were vested in his hands. The appointment of committees was vested in the president, but in the opinion of many members of the convention this power was not used fairly.

The committees must do the detailed work of the convention and each committee should have before it as soon as possible all of the proposals relating to the subject which it is to consider. In order to accomplish this purpose conventions have often definitely agreed that after a certain date no proposals should be entertained unless presented by one of the standing committees. In the New York Convention of 1915 (which met on April 6) no proposed constitutional amendment could be introduced after June 11, except on the report or recommendation of a standing or select committee. The Massachusetts Convention of 1917 met on June 6, and proposals of amendment were required to be presented by the close of the day of June 25. In the Ohio Convention of 1912 the rules made the introduction of proposals more difficult after the first two weeks of the session. Members will usually present their proposals as soon as possible, because early introduction may make a proposal more influential, but some rule is necessary in order that committees shall have all proposals before them in the early days of a convention.

Many convention rules have very properly prescribed the form in which proposals shall be introduced, requiring that all proposals be in writing, contain but one subject and have titles. In the Ohio Convention of 1912 all proposals were required to be presented in duplicate.

With respect to the general conduct of a convention's work the committee of the whole has been found a convenient instrument. In the Alabama Convention of 1901 where this committee was not employed there was much wrangling over rules and points of order. In the Virginia Convention of 1901–02 objection was made to the committee of the whole on the ground that its use would lead to repetition of debate upon each subject, an objection which finds support in the Kentucky Convention of 1890–91, but this objection is more than counterbalanced by the simpler method of procedure in committee

of the whole. If procedure in committee of the whole is adopted, some rule should exist preventing the defeat of proposals in such committee without a roll call. A committee of the whole, completely unrestricted, is probably undesirable, but a simpler procedure may be had in committee of the whole, and the convention may at the same time adopt rules which place some limitation upon action in committee of the whole. The rules of the Michigan Convention of 1907–08 seem fairly satisfactory for this purpose. "The rules of the convention shall be observed in committee of the whole, so far as they are applicable, except that the vote of a majority of said committee shall govern its action; it cannot refer a matter to any other committee; it cannot adjourn; the previous question shall not be enforced; the yeas and nays shall not be called; a motion to indefinitely postpone shall not be in order; a member may speak more than once. A journal of the proceedings in the committee of the whole shall be kept as in convention." A similar rule existed in the Ohio Convention of 1912. The important portion of this rule is that requiring that a journal be kept of proceedings in the committee of the whole.

Most conventions have begun their work practically without limitation of debate, although the previous question has been permitted. In the Michigan Convention of 1907–08 any member could move the previous question but must be seconded by ten members and it could be ordered by a majority of those present and voting; in the Ohio Convention of 1912 a two-thirds vote was necessary to sustain the previous question. In the New York Convention of 1894 several rules limited debate. The previous question could be carried by a majority vote and the committee on rules could, when ordered by the convention, report a rule limiting debate upon a particular question.[7]

Obstructive tactics seem to have been resorted to by the minority in the New York Convention and a rule was finally brought in and adopted denying the ayes and noes on formal and dilatory motions. The Michigan Convention somewhat late in its session limited the length of speeches in committee of the whole and the Illinois Convention of 1869–70 found it necessary to adopt a similar limitation. In the South Carolina Convention of 1895 the expedient was adopted late in the session of appointing a steering committee, to apportion the time and direct the work of the convention.

Convention debate should be free enough to allow adequate consideration of every proposal, but experience has shown that if a convention starts its deliberations without any limitations upon debate a large portion of the time is likely to be taken up with excessive debate upon the earlier questions presented, so that the later work of the convention must be unduly rushed. In order to prevent such a situation it is wise for a convention to impose a moderate limitation upon debate at the outset, and such a limitation should exist not only for the convention itself but also for action in committee of the whole.

In connection with the orderly consideration of the proposals before a convention, it may be necessary to have a rule somewhat similar to that of the New York Convention of 1915. "The third reading of proposed constitutional amendments shall take place in the

[7] Revised Record, New York Convention of 1894, I, 215; IV, 700; V, 674, 677, 678.

order in which they have been ordered to a third reading unless the convention by a vote of two-thirds of the members present direct otherwise or the proposed constitutional amendment to be read is laid on the table."

In the Michigan Convention of 1907–08 the first committee appointed was one on permanent organization and order of business. This committee was afterward made permanent. It reported the plan of committee organization and made other reports during the session of the convention. One of its recommendations, which was adopted, provided for a weekly meeting of the chairmen of committees, to be presided over by the president of the convention, "at which meeting the chairmen of the several committees shall report progress and consider such other matters as may be of interest in advancing the work of the convention."[8] Such a plan, if properly carried out, should do much to unify the work of a convention. In any organization of a convention there should be some central organization which will effectively direct the work and prevent loss of time, although of course much of the usual loss of time may be avoided by careful consideration in the first instance of the rules under which a convention is to proceed.

A committee on arrangement and phraseology is perhaps the most important single committee of a convention. Practically all conventions have had a committe of this type but the name of the committee has varied. In the Federal Convention of 1787 there was a committee on style, and in the Illinois Convention of 1869–70 there was a committee on revision and adjustment. A recess has often been taken by the convention so as to allow sufficient time for the work of this committee. In the greater number of conventions the committee on arrangement and phraseology has been merely a proof reading committee, and in some cases fear has been expressed lest this committee change the sense of proposals adopted by the convention. However, a committee is needed to do something more than the mere editorial work of removing inconsistencies in sense and language. The work of a convention is necessarily made up from reports of a number of committees and the proposals presented will naturally lack consistency in draftsmanship. The committee on arrangement and phraseology should serve in large part as a central drafting organ to give unity to the work of a convention.

In the use made of its committee on arrangement and phraseology, as well as in the general method of procedure employed, the Michigan Convention of 1907–08 deserves brief consideration. Proposals introduced by members were read and referred to the appropriate committee; when reported by the committee they were taken up in committee of the whole, and when reported upon by the committee of the whole were referred to the committee on arrangement and phraseology. The proposal when reported upon by this committee, was put upon its second reading and after second reading was voted upon. If adopted, it was again referred to the committee on arrangement and phraseology which, after all proposed amendments had been considered, reported the complete revision as agreed upon, the convention taking a twelve-

[8] Proceedings and Debates, Michigan Convention of 1907-08, I, 86.
In many conventions the committee on rules has also considered the subject of organization and order of business. Two committees hardly seem necessary.

day recess in order to give time for this work. This revision was then considered by sections in the committee of the whole, was reported to the convention and was then put upon the third reading and voted upon by articles and as a whole. This procedure gave four different opportunities for the discussion and amendment of every proposal. But more important, it gave the committee on arragement and phraseology great influence by allowing it an opportunity to revise the language of each proposal after it was agreed to in committee of the whole and before it was definitely adopted; proposals so revised came again to this committee to be consolidated into a complete Constitution. As a result of this care the Michigan Constitution of 1908 is the best drafted of recent state Constitutions.

A somewhat similar use of its committee on arrangement and phraseology was made by the Ohio Convention of 1912. The consideration upon second reading was primarily upon the substance, and thereafter the proposal went to the committee on arrangement and phraseology and after the report of this committee it was presented for final action. The Ohio committee presented its reports in such a manner that each member of the convention had before him the original form of proposal adopted by the convention, the changes recommended by the committee, and the proposal as it would read if such recommendations were adopted.[9]

In the Illinois Convention of 1869–70 the committee on revision and adjustment was primarily an editorial committee. The New York Convention of 1915 and the Massachusetts Convention of 1917 are of interest as presenting a fairly effective use of a similar committee. Of recent conventions those of Michigan (1907–08), Ohio (1912), and New York (1915), had the most satisfactory rules. The rules of the New York Convention of 1894 were based too much upon partisan considerations. The rules of the Massachusetts Convention of 1917 are open to the objection that they allow absolute freedom of debate in committee of the whole, and have tended to permit too great a degree of debate upon the measures first presented to the convention.

[9] Letter from Professor G. W. Knight of Ohio State University, who was a member of the Ohio Convention of 1912.

ARGUMENTS FOR AND AGAINST A CONSTITUTIONAL CONVENTION.

The question of assembling a convention will be submitted to the voters at the general election to be held on November 5, 1918. The resolution for a convention was adopted by the Senate on January 24, 1917, and concurred in by the House of Representatives on March 14, 1917. Since that time there has been more or less discussion concerning the advisability of calling a convention at this time. In view of the impending election the discussion of this question will no doubt become more keen and pronounced. Consideration, therefore, of the arguments for and against the assembling of a convention may not be amiss.

ARGUMENTS FOR A CONVENTION.

Any argument in favor of a convention necessarily assumes the need for amending the Constitution. One of the arguments against a convention also assumes the need for constitutional revision. There are two methods of amending the Constitution: (a) the convention method and (b) the legislative proposal method. Those who favor amending the Constitution but oppose the convention take the position that necessary constitutional revision may be obtained by amending the Constitution so as to make the legislative proposal method more effective. They admit that the legislative proposal method in its present form is seriously defective and practically inoperative. This view, of course, involves a comparison of the two methods of amending the Constitution. Such a comparison cannot be made without stating the arguments for a convention. In order to avoid duplication the arguments for a convention will not be considered at this time. Their consideration will be deferred until the comparison of the two methods is made. In stating the arguments for and against a convention there will be presented (a) a consideration of those arguments against a convention which do not assume the need for constitutional revision together with the answers made to them, and (b) a comparison of the two methods of amending the Constitution.

ARGUMENTS AGAINST A CONVENTION.

1. It has been suggested that a convention should not be assembled pending the war. The reasons for this suggestion are (a) that all of our energies are being devoted to the task of prosecuting the war to a successful conclusion and that nothing should be permitted to inter-

fere with this task; (b) that mature deliberation and careful work by the convention might be wanting because of the fact that the primary interest of the delegates would be in the war; and (c) that the voters, carried away by their greater interest in the war, would be inclined to give insufficient heed to the work submitted by the convention.

The convention advocates have not been at a loss to answer these arguments. Their first contention is that even if the people vote for a convention on November 5, 1918, it would be almost impossible for the convention to assemble before 1919 and that, in all probability, it could not complete its work before sometime in 1920. If the war should end before September, 1919, and they argue that very likely it will, the arguments of those who oppose a convention pending the war would vanish. Moreover, there is nothing to prevent the General Assembly from postponing the assembling of a convention even if the people, on November 5, 1918, vote favorably on the convention resolution. The General Assembly which convenes in January, 1919, could provide for the election of delegates in 1920 and could direct the assembling of the convention in that year. As a matter of fact, the election of delegates and the assembling of the convention, if deemed desirable, could be postponed until 1921 or 1922.[1] But they also insist that the holding of a convention while the nation is engaged in war will not prevent the State of Illinois from doing its part in the prosecution of the war. In their view the assembling of a convention will materially assist the State in the performance of its duties in that respect, by permitting the adoption of more efficient methods in the conduct of State and local government. The present serious financial difficulties of Chicago, for example, it is pointed out, can be adequately met only through constitutional changes, and the financial problems of the State are rendered more acute by the existence of war. Government, it is urged, is a function that must continue during war, and the war presents no excuse for continuing to do governmental work less efficiently than it can be done, if a better organization is possible. Nor do they believe that the war will prevent careful work by the delegates to the convention or due consideration of the convention's work by the voters.

2. Convention opponents urge that a revision of the Constitution will operate to unsettle present judicial constructions. By a great number of decisions the Supreme Court, they say, in the course of more than 47 years, has construed and interpreted the various provisions of the Constitution. These provisions have thus been explained and their meaning definitely ascertained and established. To revise the Constitution, in their view, would be to cast aside constitutional provisions, the meaning of which, by judicial decisions, has been definitely established. The new provisions would be uncertain and indefinite. It is urged that of necessity a new era of judicial construction would follow and confusion would ensue, not to be dispelled until the

[1] The Arkansas Constitutional Convention assembled on November 19, 1917, and, two days later, having perfected its organization and arranged for the appointment of its committees, adjourned until the first Monday in July, 1918. This is another method of postponing the work of a convention. The Massachusetts Constitutional Convention which met June 6, 1917 held sessions until November 28, 1917, proposed four amendments to the Constitution, and adjourned until June, 1918, when it will resume discussion of further proposals for constitutional change.

new provisions were explained and interpreted by the decisions of the Supreme Court.

Those who favor the assembling of a convention admit that most constitutional provisions are not so clear that their meaning can be ascertained from a mere reading of the text. Generally, the purport or meaning of constitutional provisions, as applied to a particular controversy, can be determined or settled only by judicial interpretation. This is true of the present Constitution. In a great number of cases the Supreme Court has been called upon to construe and apply the provisions of the Constitution of 1870. Nevertheless, three answers are presented to the argument of those who oppose a convention.

(a) The argument, pushed to its logical conclusion, would lead to a denial of the right to amend the Constitution in any respect, notwithstanding the fact that certain alterations in that instrument are rendered well nigh imperative by the changes in times and conditions incident to the years that have passed since it was adopted in 1870. The necessity for judicial interpretation arises with reference to one or two amendments just as it would with reference to several. That the people do not wish to go to the extreme of saying that a Constitution, once adopted, should not be amended at all is illustrated by the fact that since 1870 the voters have adopted seven constitutional amendments.

(b) The decisions of the Supreme Court, as a general rule, have not definitely interpreted or explained the provisions of the Constitution. There can be no doubt, however, that the meaning of some constitutional provisions has been fully and definitely established by judicial decisions. But the provisions, the meaning of which are thus made clear, are not generally of the type that create broad limitations on the powers of the General Assembly. If a Constitution prescribes the form of the enacting clause for laws, there should be no difficulty in determining whether or not the enacting clause of a given law complies with the constitutional requirement. The enacting clause prescribed by the Constitution of 1870 is: "Be it enacted by the People of the State of Illinois, represented in the General Assembly."[2] Suppose the General Assembly should pass a law with the following enacting clause: "Be it enacted by the General Assembly." Clearly the law would be void as not complying with the constitutional requirement concerning the enacting clause. Again, the Constitution of this State provides that "no (senatorial) district shall contain less than four-fifths of the senatorial ratio."[3] It should not be a serious problem to ascertain whether or not a certain district has a population less than the prescribed ratio. Suppose that a new Constitution would substitute "three-fourths" for "four-fifths" in the foregoing provision. Would the substitution unsettle or disturb previous judicial decisions involving the original provision? Clearly it would not. The class of constitutional provisions now under consideration is narrow and definite and sets an objective standard. Constitutional provisions or limitations which are narrow in scope and application and prescribe their own standards do not call for the exercise of much discretion on the part of the courts. Judicial decisions with reference to such provisions

[2] Constitution 1870, Article IV, Section 11.
[3] Constitution 1870, Article IV, Section 6.

cannot be said to constitute judicial interpretations which might be disturbed by the alteration of the provisions.

Constitutional provisions, however, are not always definite; nor do they always prescribe standards for the guidance of the courts. Many constitutional provisions are indefinite and do not set up their own standards. The meaning of this type of constitutional limitations can be established or ascertained only by judicial interpretation and any attempt to change or alter such limitations immediately raises the objection that judicial constructions will be unsettled. A partial answer to this objection can be made by pointing out that many important provisions of the Illinois Constitution have not yet been passed on by the Supreme Court and that, therefore, there are, as to many important constitutional questions, no judicial constructions to upset. Convention advocates realize, however, that such an answer evades the issue for many such provisions have been judicially interpreted. But they contend that judicial decisions involving the broader and more important constitutional provisions of the type now being considered have not established any definite rules which might be unsettled by the alteration of the Constitution. In their view judicial decisions with reference to this class of provisions has not clearly and definitely established the meaning of such provisions.

The Illinois Constitution provides that "no act * * * shall embrace more than one subject, and that shall be expressed in the title."[4] This is an indefinite provision which sets no standard for the guidance of the courts. Courts have been unable or unwilling to develop any precise standard for themselves. Each case presented has been decided on the facts and circumstances surrounding the particular case. The following quotation from a decision rendered by the Supreme Court of Missouri is illustrative of the situation:

> "No definite rule to test the sufficiency of titles of enactments has yet been formulated. Each case must be adjudicated upon the special facts it exhibits, having regard to the cogent reasons of public policy which led to the adoption of the constitutional provision."[5]

There is no settled judicial construction of the above provision. It is obvious, therefore, that the changing of such a provision could not have the effect of superseding previous judicial constructions.

The Constitution of this State provides that "no law shall be revived or amended by reference to its title only, but the law revived or section amended shall be inserted at length in the new act."[6] This would seem to be a narrow, definite provision. The provision seems to refer to the express amendment of existing acts, but the Supreme Court in a number of cases has held that this provision applies to an independent act if the independent act relates to a subject dealt with by an existing act and is incomplete unless read in connection with the existing act.[7] In People v. Crossley,[8] the court says:

[4] Constitution 1870, Article IV, Section 13.

[5] State ex rel. Kansas City Park District v. County Court, 102 Mo. 531 (1890), page 537. See also State v. Great Western Coffee and Tea Co., 171 Mo. 634 (1903), page 640.

[6] Constitution 1870, Article IV, Section 13.

[7] People ex rel. Cant v. Crossley, 261 Ill. 78 (1913); Brooks v. Hatch, 261 Ill. 179 (1913); Board of Education v. Haworth 274 Ill. 538 (1916); People ex rel. Stuckart v. Day, 277 Ill. 543 (1917), pages 556–557.

[8] 261 Ill. 78 (1913), page 97.

> "If the act in question is not complete within itself, and it is necessary to read into the new law certain provisions of prior statutes in order to make it intelligible, and the new act is an attempt to amend the old law by intermingling new and different provisions with the old ones or by adding new provisions, so as to create out of the existing laws and the new act together a complete act upon the subject, then the new act is held to be amendatory of the old law, and the requirement of the Constitution must be complied with to make it valid."

The framers of the Constitution evidently had in mind such amendments as attempted to amend an existing law by the insertion or striking out of certain words in a certain section or sections; if the Legislature, by an act expressly purporting to amend a certain law, desired to change the wording of that law, or certain sections thereof, by inserting or striking out certain words, it should do so only by expressly setting forth in the amendatory act the section or sections as amended and not merely by setting forth the words to be inserted or stricken out. But under the rule announced in People v. Crossley and other cases a judicial standard by which to test legislation is substantially impossible. What is an incomplete act is, of course, a question for the courts in each particular case. The decisions formulate no general rule by which a legislator can determine whether or not a proposed law is complete in itself. The Supreme Court has established no definite line separating what is properly independent legislation from legislation that must be amendatory, and the General Assembly almost daily must enter in this respect into a guessing contest with the court, not because of the lack of knowledge or care, but because of the fact that with all of the decisions of the court upon this matter before a conscientious legislator, he is still uncertain as to which of two paths he must take. Here a constitutional provision, apparently clear and definite in its terms, has been actually rendered vague and indefinite by judicial construction. Can it be said that the changing of the constitutional provision relating to amendment by reference would result in the unsettling of judicial construction? Apparently there is here no settled judicial construction to be unsettled.

What has been said with reference to titles of acts and amendment by reference applies with as much, if not more, force to the broader, indefinite constitutional limitations such as the general prohibition against local and special legislation and the due process of law clause.[9] These provisions are indefinite and prescribe no guiding standard capable of application by a court without any great discretion as to their interpretation or extent. The meaning of such provisions can be established only by judicial interpretation. But in disposing of cases involving the due process of law clause and other provisions, similar in general character, the Supreme Court has determined only the particular issue involved. The terms of such constitutional provisions remain as indefinite as ever. The court has simply decided each case in accordance with the surrounding facts and circumstances. Upon these broad constitutional limitations, which give basis for numerous and difficult cases, there is little of settled judicial construction

[9] Constitution 1870, Article IV, Section 22; Article II, Section 2.

to be upset, and the placing in a new Constitution of the same, or similar limitations, would leave the same type of indefiniteness that now exists.

(c) But, admitting that present judicial constructions should not be upset, why should it be presumed that a convention would do so? If the framers of a new instrument are to replace the present Constitution by a more satisfactory one, it is essential that they should know what the present terms mean. A new Constitution should not be framed without a definite knowledge of the judicial interpretation placed on each clause and provision of the present Constitution. It would be distinctly foolhardy to attempt to revise the present Constitution without paying any attention to the decisions which have enlarged or restricted the meaning of the various provisions. A great many judicial constructions or interpretations should be preserved while others should be overcome. If the members of a convention can have before them a careful statement of present constructions and of the meaning of the present constitutional language as construed by the court, no difficulty should be experienced in preserving that which it is desirable to preserve, and in abandoning the constructions desired to be overthrown. With such information before it there is little danger of the unsettling of constructions that have stood the test or of disregarding the experience of the past.

THE TWO METHODS OF AMENDING THE CONSTITUTION.

Section 2 of Article XIV of the Constitution provides that amendments to that instrument may be proposed in either house of the General Assembly. If a proposed amendment is voted upon favorably by at least two-thirds of the members elected to each house of the General Assembly, it is submitted to the voters at the next election of members of the General Assembly. No amendment proposed by the General Assembly can become effective, however, until it has been voted on favorably by a majority of the voters participating in the election at which it is submitted. And the General Assembly is forbidden to propose amendments to more than one article at the same session.

For three definite reasons the legislative proposal method of amending the present Constitution is defective. (a) Under the present voting system the requirement that a proposed amendment, to become effective, shall receive a majority of the votes cast at the election at which it is submitted almost precludes the adoption of amendments proposed by the General Assembly. It is almost impossible to get a majority of the voters in a regular election to take favorable action with reference to any question submitted at that election.[10] Only two constitutional amendments have been adopted since 1891. The tax amendment of 1916 failed of adoption notwithstanding a vigorous campaign in its favor.[11]

(b) The provision forbidding the General Assembly to propose amendments to more than one article at the same session operates as a serious check on the Legislature.[12] The fourteen articles of the Con-

[10] See ante, pages 32-35.
[11] People v. Stevenson, 281 Ill. 17 (1917).
[12] See ante, pages 31, 32.

stitution are more or less closely related. Because of that fact almost any substantial constitutional change will require the express amendment of more than one article. Under this provision the General Assembly is practically powerless to propose changes of that character.

(c) This same provision makes it difficult for the General Assembly to propose constitutional amendments.[13] Amendments can be proposed to but one article of the Constitution at the same session of the General Assembly. No proposed amendment can be submitted to the people until it has been approved by two-thirds of the members elected to each house of the General Assembly. This leads to competing amendments. One group of legislators will favor an amendment to a certain article of the Constitution. Another group will favor an amendment to a different article. Under the Constitution both amendments cannot be submitted at the same session. If any amendment is to be submitted, one group must give way to the other. But neither group will abandon its proposed amendment, and generally the result is that neither of the proposed amendments can muster the necessary two-thirds vote in each house of the General Assembly.

Those who feel that there should be certain constitutional changes but oppose the convention method of obtaining them readily admit that the present legislative proposal method of amending the Constitution is practically inoperative. But they take the position that section 2 of Article XIV can be amended so as to obviate the difficulties now attending the legislative proposal method of obtaining constitutional amendments. Their plan is to amend section 2 of Article XIV so as to give the General Assembly power to propose amendments to any or all articles of the Constitution at the same session. They also suggest that this section might be amended so as to permit the ratification of proposed amendments by a popular vote of less than a majority of the electors participating in the election. In their view, if section 2 of Article XIV is so amended, all necessary constitutional changes can be obtained without calling a convention.[14]

This argument against a convention necessarily involves a comparison of the two methods of amending the Constitution. In making such a comparison, however, it should be borne in mind that the Constitution is an old instrument and that it stands practically unchanged although adopted more than forty-seven years ago. In the course of nearly fifty years only seven amendments have been adopted. It is only fair to presume, therefore, that no matter which plan of securing necessary constitutional changes should be adopted, several amendments will be proposed. In view of that fact, which method is likely to secure the best practical results? That is the question to be answered.

ARGUMENTS FOR THE LEGISLATIVE PROPOSAL METHOD.

It must be remembered that the arguments for the legislative proposal method of amending the Constitution assume the need for changes in that instrument. The advocates of both methods of changing

[13] See ante, page 31.
[14] See Latham, C. R., Is a Constitutional Convention in Illinois Desirable at this Time? Illinois Law Review (May, 1914), Vol. IX, page 1.

the Constitution are agreed that constitutional changes are necessary. They differ only as to the means of obtaining necessary constitutional changes. It should also be remembered that the proponents of the legislative proposal method admit the present ineffectiveness of that method. Their arguments are based on the plan of amending section 2 of Article XIV so as to give the General Assembly practically unlimited freedom to propose constitutional amendments, and are as follows:

1. A new Constitution would probably contain ninety per cent of the provisions of the present one. A convention, therefore, would really do nothing more than amend the existing Constitution. It would not frame a new Constitution. If the General Assembly is given practically unlimited power to propose amendments there would be no necessity for incurring the expense incident to the assembling of a convention. Such changes as are necessary could be proposed by the General Assembly.

2. A convention will submit its work as a whole—that is, as a complete new Constitution. The voters will thus be forced to accept the new instrument as submitted by the convention, or reject it in its entirety. Under the legislative proposal method all amendments are submitted separately, each to be accepted or rejected by the voters as they see fit.

3. Ill-advised or experimental schemes of government may be incorporated into a new Constitution by a convention. The assembling of a convention would be a signal for a concentrated movement to procure the adoption of such schemes. While it is true that under the legislative proposal method schemes of this character would be urged upon the General Assembly, there would be less likelihood of concentrated efforts to obtain their adoption.

ARGUMENTS FOR A CONVENTION.

Convention advocates do not take the position that greater freedom for the proposal of constitutional amendments by the General Assembly is undesirable. Such freedom, in their opinion, is highly desirable. The rigidity of the present Constitution in that respect should, under no circumstances, be carried forward into a new Constitution. But if a number of constitutional changes is desired, and, in their view, that is the case in Illinois today, the convention method is superior to the legislative proposal method even if section 2 of Article XIV is to be amended so as to give the General Assembly practically unlimited power to propose constitutional amendments. Their arguments for the convention method may be summed up as follows:

1. Some difficulty might be encountered in amending section 2 of Article XIV in accordance with the plan of those who favor the legislative proposal method. The process of amending the Constitution is not a subject likely to attract great popular attention. Efforts to amend the amending clause were made in 1892 and 1896, and resulted in failure because of the smallness of the popular vote. The question of assembling a constitutional convention, on the other hand, is one likely to attract popular attention, and upon which the requisite popular

vote is more likely to be obtained. It may also be suggested that the proposal to amend the amending clause is one that has been agitated since 1891, and twice submitted to the people, all without result. The question of amending the amending clause has had its trial. The issue now before the people is that of calling a constitutional convention and to urge the other method now is really to urge further delay in the process of obtaining desirable constitutional changes.

2. Admittedly it is more expensive to obtain constitutional changes by the convention plan than by the legislative proposal method. The Convention of 1869–70 cost the State of Illinois $192,848.51.[15] For the work of the New York Convention of 1894 an expense of nearly half a million dollars was incurred;[16] this includes all expenses for printing which were heavy. For the Michigan Convention of 1907–08 the expense for officers and members, postage and incidental items was $141,950.07.[17] The expenses of the Ohio Convention of 1912 were $267,571.11, though of this about $63,000 was for publication in the various newspapers of the state, an item not included in the statements here given regarding the expenses of other conventions. Expenses of the elections at which the work of those conventions was submitted are not included in any of the foregoing figures. In this connection, it is interesting to note that the expenses of the Fiftieth Illinois General Assembly were $862,747.60.[18] And the General Assembly meets regularly every two years while there has not been a constitutional convention in this State for nearly fifty years.

Constitutional matters, however, are very important. Proper and satisfactory work is entitled to primary consideration. The question of expense is not entitled to much weight unless it can be shown that the work of the General Assembly in submitting amendments would be as efficient and satisfactory as that of a convention.

It is contended that under the circumstances of today the task of submitting constitutional amendments cannot be as efficiently and satisfactorily performed by the General Assembly as by a convention. The Constitution of 1870, an instrument containing many detailed provisions, stands practically unchanged although it was adopted nearly fifty years ago. Many of the details in that instrument have long since outlived their usefulness and should be changed. Could the General Assembly, beset as it is, with a myriad of other things, give proper care and attention to a number of detailed amendments? With the General Assembly the proposal of constitutional amendments is an incidental function. The Fiftieth General Assembly, which was in session for less than six months, was confronted by 1,653 bills and several resolutions. Under such circumstances it would be impossible for the General Assembly to make a thorough examination of the detailed provisions of the present Constitution with a view of removing the details which are now obsolete or which are causing difficulty. Moreover, the scheme of government provided for by the present Constitution was adopted years ago when circumstances and conditions were entirely

[15] Financial Report of Auditor of Public Accounts, 1869-70, pages 26-27; 1870-72, page 19.
[16] Annual Report of the State Treasurer 1893-94, page 195; 1894-95, page 255; 1895-96, page 308; 1896-97 page 264; 1897-98, page 273; 1898-99, page 290; 1901-02, page 451.
[17] Annual Report of Auditor General, year ending June 30, 1908, page 107.
[18] See Statement of Expenses of Fiftieth General Assembly (Regular Session) compiled by the Auditor of Public Accounts.

different than they are today. It would be desirable to re-examine our present form of government to see if changing conditions have not made necessary many changes in that form of government. The General Assembly, faced by a multitude of other duties, has not the time or the opportunity to make a careful examination of our present form of government.

On the other hand, a convention is a body elected for the specific purpose of examining one document—the present Constitution. It is not confronted by a large number of proposed laws or resolutions. It may and would devote its entire time to a careful examination of the present Constitution. A thorough study of the detailed provisions of the Constitution would be made. A similar study with reference to our present form of government would be made also. Constitutional changes proposed by a convention would be submitted to the voters only after a careful study of the existing Constitution.

Convention advocates believe that a thorough and complete examination of the Constitution should be made with the view of removing or changing those detailed provisions which are no longer of value and to ascertain whether or not certain changes in our present government have not been made imperative as a result of changing conditions since 1870. They feel that, in making such an examination, a convention, because it has before it but one specific task, can do more efficient and satisfactory work than the General Assembly.

3. Those who sponsor the movement for a convention do not feel that there is much weight to the argument that it will be necessary for the voters to accept the work of a convention as a whole or reject it in its entirety. A convention may submit its work according to any one of three plans: (a) It may submit a complete new Constitution. The Michigan Convention of 1907–08 followed this plan. (b) It may submit its work as a series of separate amendments, each to be voted on separately. The Ohio Convention of 1912 proposed forty-two changes in the existing Constitution, each of which was submitted to a separate vote. (c) The Illinois Convention of 1869–70 submitted a complete new Constitution together with eight separate provisions to be voted on independently of the new Constitution. The New York Convention of 1915 submitted a new Constitution and two separate provisions.

The first plan of submission is generally opposed on the ground that the voters should be given some freedom of choice as to questions of great public interest. The second plan is open to objection because numerous changes in the present Constitution may be deemed desirable and the submission of a large number of separate amendments will tend to confuse the voters. The legislative proposal method, even if the General Assembly is given almost unlimited freedom in proposing constitutional changes, is defective for that reason. All amendments proposed by the General Assembly must be submitted separately. If the General Assembly should propose a number of changes, and, if given the power, it would undoubtedly do so, all of them would be submitted separately. The probability of confusion on the part of the voters would thus arise.

The third plan of submitting a convention's work is regarded as the most desirable. Under this plan those changes which do not involve questions of special public interest would be worked into a complete instrument to be accepted or rejected as a whole, while provisions relating to "popular issues," such as would be taxation or woman suffrage in this State, would be submitted separately. Under this scheme the voters would be given the opportunity of expressing themselves independently with reference to questions in which they were primarily interested, but at the same time the possibilities of confusion are lessened by the incorporation of all provisions relating to matters of less popular interest in a complete new Constitution to be accepted or rejected as a whole. This plan was adopted by the Illinois Conventions of 1848 and 1869–70. A precedent has been established which is not likely to be departed from.

4. As to the question of incorporating into a new Constitution ill-advised or experimental schemes of government, it is contended that there is less danger of that under the convention method than under any easy legislative proposal method. The basis for this contention is that there is less restriction on debate and discussion in a convention than in the General Assembly and that a convention presents a better opportunity for careful consideration and mature deliberation. The detection of defects in proposed schemes of government is, therefore, more probable in a convention than the General Assembly.

5. It is true that a convention in this State would retain the greater part of the provisions of the present Constitution. Only such changes as are necessary to meet new needs would be recommended to the voters. Nevertheless many changes might be deemed necessary. It is of the highest importance that proposed constitutional changes should be carefully drafted or framed, and each proposed change should be studied in its relation to the whole instrument so that it may be properly fitted into the amended Constitution for the purpose of obtaining complete harmony among the various constitutional provisions. For such work a body having before it but one specific task is likely to be more satisfactory than a body charged with the performance of many other duties in addition to those of considering and proposing constitutional changes. And this is particularly true if the latter body is expected to propose numerous changes in the Constitution.

6. A convention's work may and undoubtedly would be submitted at a special election. This will insure greater deliberation and more intelligent action by the voters. Having nothing before them but proposed constitutional changes they will make a greater effort at investigation than if asked to vote on such changes at a general election, when they are more interested in contests between individuals. It must be admitted that voters are decidedly more interested in a contest between individuals seeking a political office than in any concrete question which may be submitted to them. Of course there can be no objection to the submission of one or two proposed constitutional changes at a general election. However, if a number of changes are submitted at a general election, they are not apt to receive from the voters the care and attention that they should receive. But it will

be said that in amending section 2 of Article XIV, why not provide for the submission of legislative proposals to amend the Constitution at a special election? The answer is that the door would then be opened for the calling of a special election for the submission of any single proposed amendment, important or relatively unimportant, which would entail great expense.

PROBLEMS LIKELY TO BE CONSIDERED BY A CONVENTION.

In the preceding pages with reference to constitutional development in this State an attempt has been made to point out the more important questions before our previous conventions. Each convention, with the possible exception of the first one, was confronted by certain definite problems. If a convention were assembled at this time it would not be an exception to this rule. It would be called upon to provide for the needs which have arisen since the adoption of our present Constitution. The following pages will be devoted to a discussion of some of the more important problems or questions likely to be considered by a convention, if one should be assembled.

TAXATION IN ILLINOIS.

We have in this State what is known as a general property tax. Such a tax, for the purposes of this article, may be defined as a tax which requires all property of each owner to be taxed at the same rate in proportion to its value.

The provisions of our Constitution bearing specifically on the requirement of taxation in proportion to value are as follows:

> "The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor dealers, toll-bridges, ferries, insurance, telegraph and express interests or business, venders of patents and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."[1]
>
> "The General Assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever."[2]

[1] Article IX, Section 1.
[2] Article IX, Section 6.

"The General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment or by special taxation of contiguous property or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same." [3]

"The General Assembly shall not impose taxes upon municipal corporations or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation." [4]

Authority to exempt certain kinds of property is found in the following provision:

"The property of the State, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property." [5]

The decisions of the Supreme Court, which have construed the above sections, need be cited to show only: (1) that each owner is to be taxed in proportion to the value of his property; (2) that exemption and classification, (except such as is expressly permitted by Article IX, section 3), which discriminates for or against a class of owners, violates Article IX, section 1; (3) that the constitutional requirement of taxation in proportion to the value applies not only to taxation by the State as permitted by section 1, but as well to taxation by local authorities as permitted by sections 9 and 10; and (4) that the release, discharge or commutation of taxes is not permitted. The following quotations support these four points:

(1) "Under section 1 of article 9 of the Constitution we think it is plain that the burdens of taxation were intended to be cast equally upon all the property of the State, of every description. Where revenue was needed a tax is required to be levied, on a valuation, so that every person and corporation shall be required to pay a tax in proportion to the value of his, her, or its property. Uniformity of taxation on all property was the cardinal principle of that section of the Constitution, and had it not been for the adoption of section 3 of article 9, the Legislature would have had no power, in any case, to enact a law exempting any property from taxation." [6]

[3] Article IX, Section 9.
[4] Article IX, Section 10.
[5] Article IX, Section 3.
[6] Loan and Homestead Association v. Keith, 153 Ill. 609 (1894), page 618.

(2) "If there is an exemption of property within the classes enumerated in the Constitution it must be by general law, but authority is denied to the Legislature by the Constitution to exempt any property except that which is enumerated, by any form of legislation, general or special. Any exemption from the rule of equality established by section 1 of article 9 outside of the kinds of property enumerated in section 3 of that article is absolutely prohibited." [7]

(3) "The 9th section of article nine of the Constitution, in authorizing taxes to be laid and collected by municipal corporations, provides that such taxes shall be uniform in respect to persons and property within the jurisdiction imposing the same. To secure that uniformity, two things are essential: First, the assessments shall be just and equal, in proportion to the value of the property liable to assessment; and, secondly, when thus assessed, the rate shall be uniform as to every person, and on every species of property, returned by the assessor for taxation." [8]

"A taxing district, within the meaning of this law, is the municipality which levies the tax that is to be scaled. If the appellee's contention be allowed to prevail, the result would be that one portion of Reed township would be paying town taxes at the rate of $1.38 per $100 valuation while other portions of the same township would only pay seventy-five cents per $100. This construction would render the statute unconstitutional. Section 9 of article 9 of the Constitution requires that all municipal taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same. By scaling the town taxes in Reed township to seventy-five cents per $100 the uniformity required by the Constitution will be preserved. If the scaling should be limited to some other municipality within or partly within such township less than the township, the uniformity of rates would be destroyed." [9]

(4) "The effect of the act is to exempt owners of property in districts not providing four years of recognized high school work from paying taxes proportionate to the value of their taxable property as compared with the taxable property of other districts, to the extent that the State tax is appropriated to a local and corporate purpose. The result is to release the districts from the payment of taxes for such purpose, and that is a violation of section 6 of article 9 of the Constitution, which provides that the General Assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, of their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever. The state-wide school tax is a tax for a State purpose, to be apportioned to and distributed by the Auditor among the counties and by the county superintendent of schools among the districts in the county, and by the act in question the school

[7] Consolidated Coal Co. v. Miller, 236 Ill. 149 (1908), page 153.
[8] Sherlock v. Village of Winnetka, 68 Ill. 530 (1873), page 534.
[9] People v. Chicago & Alton Railroad Co., 247 Ill. 458 (1910), page 460.

district maintaining no high school is released from taxation for the local and corporate purpose of paying tuition of its pupils residing in the district and attending schools outside of the district."[10]

An explanation of the practical result of these constitutional provisions is difficult. Throughout the subsequent discussion, it is important that the constitutional theory of our tax system be kept in mind; all property of whatever type is to be treated in the same manner for purposes of taxation. This rule of taxation was adopted in substance in our Constitution of 1818 and was re-stated but retained in substance in the Constitution of 1848. During most of the time this tax system has been in effect and up until recently property was of tangible form—land, houses, live stock, furniture, etc. It was for this kind of property that the system was developed. All property was substantially of one type and could fairly be assessed in the same manner for purposes of taxation.

Our State has increased immensely in population and wealth. With this increase new and complicated forms of wealth have developed. One of the most important of these new forms is intangible personal property; that is, we have a tax system based upon the assumption that all property is of the same class, and new types of property have developed which cannot adequately be reached by a tax system designed for earlier and simpler conditions.

Property naturally divides itself into three classes: real estate, tangible personal property, and intangible personal property. Intangible personal property is the form for which our tax system was not created, and which does not pay its proportionate share of taxes.

It is a well known fact that no class of property has ever been assessed at a figure which is equivalent to its true value, that is, its fair cash value. But this would not be important if all classes of property were assessed proportionately. In other words, in 1910 if the full assessed value of each of our three classes of property was one-third of the true value, still each class of property would yield taxes in proportion to its value. But if real estate is assessed at one-third its true value and intangible personal property at one-sixth its true value, then the constitutional provision that each class of property yield taxes in proportion to its value is not adhered to. Since no class of property is assessed at its true value, our comparison between the assessment of classes of property becomes a relative and not an absolute one.

Our first duty is to discover that class of property which is assessed at most nearly its true value. A brief study of assessment figures quickly brings us to the conclusion that real estate yields taxes on more nearly its true value than any other class of property. The relation of the full assessed value to the true value of real estate represents the maximum efficiency of our tax system as applied to all classes of property. Table I shows the estimated true value of real estate, its full assessed value, and the percentage of the true value which is covered by the full assessed value for the years 1890, 1900, 1904 and 1912.

[10] Board of Education v. Haworth, 274 Ill. 538 (1916), page 545.

TABLE I.

Comparison of Estimated True Value and Full Assessed Value of Taxable Real Estate as Compiled from United States Census Reports on Wealth, Debt and Taxation.

Year.	Estimated true value.	Full assessed value.	Per cent of estimated true value covered by full assessed value.
1890	3,108,040,960	587,442,289	18.9
1900	4,008,676,366	*2,841,841,545	70.8
1904	5,185,946,082	*3,805,196,640	73.3
1912	9,158,336,367	†4,945,501,638	54.0

* Law enacted 1898 (Laws 1898, p. 36) and in force till 1909 provided that the "assessed value" should be one-fifth of the "full value". These figures are five times the assessed value.

† This figure is three times the assessed value since law enacted 1909 (Laws 1909, p. 308) provided that the "assessed value" should be one-third of the "full value".

A study of assessment figures subsequent to 1912 shows that they have increased very slightly. We may safely say then that the per cent of the true value which is now covered by the full assessed value is still about fifty per cent.

The law of this State provides that personal property shall be assessed in thirty-six different classes.[11] One of these is the "amount of money other than of bank, banker, broker or stock-jobber." Aside from a comparatively small amount of cash in the possession of the tax-payer, this is practically a tax on individual bank deposits in all banks in the State. In other words, it is a form of intangible personal property. The figures on which Table II is based are as authentic as it is possible for any figures of their nature to be. It must be said, however, that they are slightly incomplete. There should be added to the individual bank deposits, were it possible, any cash on hand and individual deposits in private banks, for these are supposed to be in the assessed amounts included in the second column. Of course, this would make the per cent of the true value covered by the full assessed value even smaller than it is. Disregarding this rather minor error, the efficiency of the tax system in assessing this kind of property is brought out by this table.

[11] Hurd's Revised Statutes 1915-16, Chapter 120, Section 25.

TABLE II.

Comparison of Individual Bank Deposits with Assessed Full Valuation of Moneys not Including Bankers' Moneys.*

Year.	Individual bank deposits.	Full assessed value of moneys not including bankers' moneys.	Per cent of individual bank deposits covered by full assessed value of moneys not including bankers' moneys.
1889	$124,374,251	$ 9,516,138	7.6
1890	142,040,086	9,456,573	6.6
1891	174,118,198	9,267,494	5.3
1892	203,871,992	9,195,675	4.5
1893	191,041,772	9,950,825	5.2
1894	193,964,276	7,769,358	4.0
1895	201,392,368	9,176,947	4.5
1896	203,737,857	8,196,180	4.0
1897	200,163,357	8,633,129	4.3
1898	242,048,068	7,951,202	3.2
1899	296,785,239	88,711,050	29.8
1900	317,169,861	75,578,260	23.8
1901	384,658,927	81,993,775	21.3
1902	432,974,839	82,367,190	19.0
1903	473,542,783	85,740,320	18.1
1904	519,943,194	89,442,815	17.2
1905	603,081,049	92,177,530	15.2
1906	623,789,413	93,865,720	15.0
1907	670,862,704	94,721,180	14.1
1908	674,353,941	93,641,205	13.8
1909	729,878,790	93,772,812	12.8
1910	815,767,828	96,614,394	11.8
1911	863,342,364	106,576,437	12.3
1912	958,707,244	101,486,574	10.5
1913	986,051,820	105,347,307	10.6
1914	1,026,844,775	100,273,113	9.7
1915	†1,041,325,756	100,681,035	9.6
1916	1,224,879,536	108,700,854	8.8

* Compiled from Haig, History of General Property Tax in Illinois, and from Reports of Comptroller of Currency and Auditor's Report—Illinois State Banks. Assessed full value is computed by multiplying the assessed value by 1, 5 or 3 according to the law in force; see explanation of preceding table.

† Includes "state and municipal deposits subject to 30 or more days notice", but amounting to only about two million dollars.

Let us now compare the efficiency of the taxation of bank deposits with the taxation of real estate. This can best be shown in tabular form as given in Table III.

TABLE III.

Comparison of the Taxation of Moneys not Including Bankers' Moneys with the Taxation of Real Estate.

Year.	Per cent of estimated true value of real estate covered by full assessed value.	Per cent of individual bank deposits covered by full assessed value of moneys not including bankers' moneys.
1890	18.9	6.6
1900	70.8	23.8
1904	73.3	17.2
1912	54.0	10.5

This last table clearly indicates that in recent years bank deposits are assessed only about one-fifth as efficiently as real estate. A concrete example may emphasize the marked variation in the assessments of these two kinds of property. Suppose in 1912 A owns $100,000 worth of farm land and B has $100,000 deposited in his bank. A will be assessed on approximately $50,000 while B will be assessed on only about $10,000. To carry the illustration further, if the total taxes levied in their county amount to $3.50 per $100 A will pay $583.33 while B will pay only $116.66 What now has become of the constitutional provision "that every person and corporation shall pay a tax in proportion to the value of his, her or its property?"

Let us next take for illustration the assessment of a class of intangible personal property designated by law as "credits other than of bank, banker, broker or stock-jobber." Under this heading are included all credits (except of banks and similar institutions,) of which mortgages of real estate constitute one part. An estimate of the true value of mortgages can be obtained, and may then be compared with the full assessed value of credits, etc., it being remembered always that the full assessed value is of the whole of a class, while the figures for true value are for only a portion of that class. The percentages would, of course, be smaller were it possible to compare the true value of the whole of this class with the full assessed value of the whole of the class. Table IV gives us the figures for this study.

TABLE IV.

Comparison of Estimated True Value of Taxable Mortgages and Full Assessed Value of Credits other than of Bank, etc., 1880, 1887, 1903, 1912.

Year.	Estimated true value taxable mortgages.*	Full assessed value of credits other than of bank, etc.†	Per cent of estimated true value taxable mortgages covered by full assessed value of credits other than of bank, etc.
1880	$ 137,297,789	$ 17,680,302	12.8
1887	246,492,072	12,168,825	4.9
1903	739,476,216	‡110,412,065	14.9
1912	1,016,779,795	**115,685,073	11.3

* Estimated true value of taxable mortgages for the years 1880 and 1887 is taken from Haig, History of Taxation in Illinois, page 150. The figures for 1903 are computed on the basis of the estimates of the increase of mortgages in JoDaviess County; see Report of the Wisconsin Tax Commission, 1907, page 399.

† The figures for this column are taken from Haig, History of Taxation in Illinois, page 147, and from the Reports of the State Board of Equalization.

‡ Five times the "assessed value" as reported for that year; see foot notes Table I.

** Three times the "assessed value" as reported for that year; see foot notes Table I.

We are now ready to compare the taxation of credits other than of bank, etc., with the taxation of real estate. It is a fact that the assessment of credits of other than bank, etc., decreased steadily from 1887 to 1890 while the true value increased rapidly. The per cent of the true value of this class of property covered by the full assessed

value was therefore considerably less than 4.9 per cent in 1890. In the same year the per cent of the true value of real estate covered by the assessed value was 18.9 per cent. Comparing the assessment of credits of other than bank, etc., in 1903, to the assessment of real estate in 1904, the former was 14.9 per cent and the latter 73.3 per cent; in 1912 the first was 11.3 per cent and the second 54.0 per cent. We conclude that "credits of other than bank," etc., are and have been throughout this period of more than thirty years assessed only about one-fifth as well as real estate. Suppose A in 1912 owned $100,000 worth of farm land and that B owned a $100,000 mortgage. A was assessed on approximately $50,000; B on only $10,000. If the taxes amounted to $3.50 per $100 in their county, A would pay about $583.33, but B would pay only about $116.66.

These two important kinds of intangible personal property are typical of intangible personal property in general. Our study shows conclusively that this type of property has regularly paid only about one-fifth of its share of taxes as compared with real estate. By referring to Tables II and IV we see that in 1912 nearly two billion dollars of credits of other than bank, etc., and moneys of other than banker escaped taxation. How much this figure would be increased by the failure to tax other forms of intangible personal property it is impossible to say. The conclusion is forced upon us that there is something radically wrong with our tax system when this class of property year after year pays taxes on only a small fraction of its true value.

We have been considering the efficiency of the present tax system as applied to intangible personal property. It may be said that the fact that intangible personal property has never paid its proportionate share of taxes is not conclusive that a general property tax is not practicably collectible from this class of property. The personal property assessment is begun on the first of April and must be concluded on the first of June. If an owner of a mortgage or of a bank deposit does not include these two items in filling out his personal property schedule, what is to be done? The assessor does not know in most instances that the owner should have listed a mortgage or bank deposit, because he does not know that the owner owns such. Even assuming he does know that a particular tax-payer owns a mortgage or has money on deposit, he cannot in the time allowed search the recorder's book to find out the amount of the mortgage, nor can he inquire of every bank the amount of money in the tax-payer's name. Increasing as long as possible the length of time for making the assessment would not permit an efficient assessment of this class of property or any large proportion of it. Nor have other methods—making the penalty still heavier for failure to make return of personal property, giving reward for the discovery of failure to make return, etc.—been effective in increasing the assessment to any great degree. With respect to such property the general property tax has proven a failure.

As applied to intangible personal property, the general property tax is probably not just. A discussion of this question naturally divides itself into two divisions: whether intangible personal property can stand taxation at a general rate, and whether taxing such property at a general rate does not result in double taxation.

Can intangible personal property stand taxation at a general rate? Suppose A in 1916 had $10,000 in a savings account in his bank, which paid him three per cent interest. In accordance with his legal duty, he included this sum in filling out his personal property schedule. Suppose in that year the total taxes amounted to $6.00 on the $100. A's interest in 1916 amounted to $300, his taxes to $200. His return on his $10,000 was $100, or one per cent. He resolved either that he would not be so foolish as to list this deposit again, or to invest this money in some other form of property which would pay a fairer return after deducting taxes, for instance, United States bonds, which are exempt from State taxation, or in farm land, the rent of which is sufficient to cover the taxes and a fair return on his money, or deposit it in another state which does not exact so heavy a tax on bank deposits.

The exponent of the general property tax may admit this, but still maintain that $10,000 worth of money has the same value and should pay the same amount of taxes as $10,000 worth of real estate. But does he really consider the result of such an argument? If the boundary lines of this State were in fact the limits of our commercial and financial transactions, it might be possible to tax A's $10,000 as much as $10,000 worth of real estate. It is, however, axiomatic that interest rates in this State are very materially influenced by rates paid in other states. Rigid enforcement of the revenue laws in regard to money might very well have the effect of driving money out of the State. Or approach the question from another point of view. A farm is rented at a figure which is based upon certain factors. Principal among these are a fair return on the value of the land plus the probable tax on farm land of that kind, a tax that farm land has been accustomed to pay through all the history of the State. On the other hand, the value of bank deposits is figured on the basis that throughout the State such deposits have never paid their legally proportionate share of taxes and on the assumption that the general tax rate cannot be collected in this State when the money can be deposited in an adjoining state where it will not be taxed at a rate as high as our general rate.

Does taxation of intangible property result in double taxation? Suppose A loans $10,000 to B, B loans it to C, and C to D. A has a credit for that amount against B, B against C, and C against D. Assuming the interest rate to be the same in each case, B's and C's return is offset by the fact that they must pay like amounts to A and B, respectively. The net earning power of this $10,000 is expended in the first transaction. But A, B and C are each bound by law to list his credit against each debtor. The $10,000, though its earning power is not increased with each transaction, is taxed not once but several times. This is what is commonly called "double taxation," and is a favorite example of the opponents of the general property tax.

Rigid enforcement again will have the same effect as pointed out in the discussion of the economic possibility of taxing intangible personal property at a general rate. Professor Fairlie says: "It thus appears that the most vigorous efforts to assess and tax mortgages on their full value in addition to the taxation of the mortgaged property has at best had but partial success as a means of increasing revenue;

and that such efforts usually result in an increase in interest rates to borrowers, and even more commonly tends to transfer mortgage investments to residents of other states."[12] At least from the foregoing discussion it seems extremely probable that it is economically impossible to tax this class of property in the same manner and at a rate common to all property, and that to attempt to do so would result in unjust and unfair double taxation.

As stated at the outset, a general property tax requires all property of each owner to be taxed at the same rate in proportion to its value. We have shown that such a system is not applicable to certain new forms of wealth. "Classification of property for purposes of taxation," is the phrase applied to systems generally which do not require that all property be taxed at the same rate in proportion to its value. Classification does not mean necessarily that a certain class of property shall be taxed more or less than property generally, but rather that the General Assembly shall have freedom in adopting a tax system for all property, and particularly with reference to new forms of wealth. For instance, classification includes such special methods of taxation as a mortgage recording tax or a gross production tax on the output of mines. Suppose the revenue provisions of our Constitution should be changed so as to grant the General Assembly power to devise a tax system which would meet the needs of new forms of wealth. What advantages are to be gained?

A brief reference to tax systems of other states in regard to the presence or absence of a general property tax provision may not be inappropriate here and may throw some light on the problem for this State. There has been some agitation against a general property tax in a number of states in late years. In a large number of states classification of property for purposes of taxation is permitted either by absence of restrictions in the Constitution, by construction of the uniform tax clause so as to permit classification of property but with the retention of the requirement of uniformity within classes, or by express constitutional authority which grants power to classify. Thirty-three states permit classification: eighteen by express constitutional provision; ten by construction that uniformity is required only within classes; five by restrictions so vague that they are held not to prohibit classification.[13]

In eleven of the eighteen states in which classification is explicitly provided for the Legislatures have been given that power only since 1900. The trend in this direction is thus clearly indicated. On the other hand, amendments to the constitutional provisions regulating taxation permitting classification were rejected in four states. In four other states in which classification to a certain extent was already allowed, amendments providing for still greater freedom in classification were rejected. But in these last four states (Kansas, North Carolina, Oregon and South Dakota) since classification was already permitted, the rejection of the amendment does not indicate that the people of these states were necessarily in favor of a general property tax and opposed to classification. In some of these eight states, too, the vote on the amendment was overwhelmingly in favor of it, but it failed like

[12] Fairlie, History of Taxation and Revenue System of Illinois, page 53.
[13] Bulletin No. 20, Massachusetts Constitutional Convention (1917), page 14.

so many of our modern amendments on all subjects, because of the difficulty of securing an affirmative vote equal to a majority of the votes cast at the election.

Let us consider the taxation of some of the more common forms of intangible personal property in states where classification is permitted. Some states tax mortgages as an interest in the property which they encumber. This has the undesirable effect of virtually throwing upon the mortgagor the payment of the tax on the mortgage. Express stipulation to this effect in the mortgage deed is the rule in those states; and even when such contracts are prohibited by law the same result is indirectly accomplished by an increase in the interest rate sufficient to cover the tax. Other states exempt mortgages from taxation altogether. But complete exemption or taxation only as an interest in the mortgaged property has had the general effect of reducing the total amount of the assessed valuation of property, of thereby reducing the public revenue or throwing the burden of raising it on other property, and of permitting owners of large investments in mortgages to escape taxation altogether. In other words, the results have not been satisfactory. Still other states have mortgage recording tax laws. New York by a recording tax of fifty cents on the hundred dollars to be paid once has received annually an amount which shows that they have succeeded in annually taxing mortgages of four or five times the value of the total amounts of credits assessed annually in this State. In Minnesota in the first year of the operation of their mortgage registration tax the revenue amounted to more than $305,000 while there was a reduction in the revenue from credits of only $60,000 —a net gain of almost $250,000.[14]

In addition, New York has lately re-enacted its "Secured Debt Tax Law" which is similar in operation to the mortgage recording tax law and is intended to reach securities not reached by the mortgage tax law.

Another scheme employed in some states for the taxation of intangible personal property is what is known as the low rate plan. This plan of taxing securities at a low annual rate has been adopted in Pennsylvania, Maryland, Iowa, Minnesota, Rhode Island, North Dakota and other states. Results obtained under such laws have been satisfactory. The result in Minnesota is given in the following quotation.

> "The law simply includes money on hand and on deposit, promissory notes, book accounts, and other choses in action. It is popularly known as the 'money and credit' tax and the rate is 3 mills on the dollar per annum. In 1910, the year preceding the adoption of this law, the number of persons assessed for 'money and credits' in Minnesota was 6,200, principally widows and orphans and the owners of property held in estates. The total assessment of this class of property in 1910 was $13,919,806, a large part of which was not money and credits at all but was other personal property thrown into the item of money and credits by an arrangement between the property owners and assessors, so that as a matter of fact the total assessment was not nearly

[14] Fairlie, History of Taxation and Revenue System of Illinois, page 57.

so large as I have stated. The total revenue derived from the taxation of this class of property in 1910, in round figures, was $379,000. In 1911, the year the 'money and credit' tax law took effect more than 41,000 people were assessed for this class of property. In 1912 there were 50,000, in 1913, 57,000, and in 1914, 73,000. In other words, we have 73,000 people paying taxes on money and credits in 1914 where only 6,200 were paying on such property in 1910; so that the number of people contributing to the revenue of the state from this source, you see, has been multiplied several times since this law took effect.

"In 1914 the revenue derived from this tax was $589,644.92, an increase of more than $200,000, over the amount secured under the old system of taxation." [15]

These points were mentioned earlier in this discussion: that it was perhaps economically impossible and unjust to tax intangible personal property in the same manner and at a rate common to all property; that perhaps the marked under-assessment of this type of property was due to those facts; and yet that it was not just to permit this class of property to escape taxation altogether. By the low rate plan the tax rate on securities can be regulated as the nature of such property requires, but in such a manner as will compel them to bear their fair share of the tax burden. In addition, if the rate is commensurate with justice to this class, voluntary listing at more nearly its true value may be expected.

Constitutional freedom granted to the General Assembly would permit a different method of taxing railroads. "Railroad property should be valued as a unit, and should not be subjected to multiple taxation under the various forms of taxing real estate, personal property, franchise, special franchise, capital stock, etc. * * * In still other states—Wisconsin and Michigan are examples—the entire railroad property is assessed as a unit and the valuation of the unit necessarily involves a consideration of physical property, earnings and the franchise which correlates and unites the various items into one organic whole operated as a single machine. The value of a railroad lies in the net result of its operation as a whole, and there lies also its tax-paying capacity. To disintegrate a railroad for purposes of taxation into several classes of property not one of which has in reality a distinct separate existence appears to be wholly arbitrary and unscientific." [16]

It would also be possible to tax, if it should be deemed desirable, the gross production or net proceeds of mines and oil wells. Such laws are in force in Oklahoma, Nevada, Montana and other states.

The constitutionality of an income tax, should one be enacted, would be doubtful under the revenue provisions of our present Constitution. If these provisions were changed, Illinois could take its place with other progressive states which have enacted income tax laws and found them satisfactory.

This brief review of some of the revenue laws of other states is given with the object of showing the large field of legislation that

[15] Report of the National Tax Association, 1915, page 230.
[16] Report of the National Tax Association, 1915, pages 359-360.

would be thrown open to the General Assembly with the abolition of the general property tax. It can readily be seen that with the increase of population and the growth of cities intangible personal property has developed enormously, great unified railroad systems have been built up, and other new industries such as mines have become very important. A tax system created for a thinly populated and primarily agricultural state is perhaps no longer fitted for our State, which has now so decidedly changed its character. It may be desirable now to grant the Legislature freedom to enact revenue laws fitted particularly to the needs of new classes of property. It may be desirable to devise a more effective method for the taxation of securities, to tax as a unit the several railroad systems, to tax the production of our coal mines and oil wells, and to enact an income tax law. To do so, we must amend our Constitution.

A movement of this nature has already been begun in this State. The following proposed amendment to Article IX of the Constitution was adopted by the General Assembly in May, 1915, and submitted to the people at the November election 1916.

> "Article IX, section 14. From and after the date when this section shall be in force the powers of the General Assembly over the subject matter of the taxation of personal property shall be as complete and unrestricted as they would be if sections one (1), three (3), nine (9), and ten (10), of this Article of the Constitution did not exist; provided, however, that any tax levied upon personal property must be uniform as to persons and property of the same class within the jurisdiction of the body imposing the same, and all exemptions from taxation shall be by general law, and shall be revocable by the General Assembly at any time."[17]

In the case of People v. Stevenson[18] this amendment was held not to have received the required constitutional vote; that a majority of the votes cast at the election was necessary but not received. There were, however, 656,298 votes for the amendment, and only 295,782 votes against, so that an overwhelming majority of those who expressed an opinion on the amendment were in favor of it. This is a strong indication that the people of the State are in favor of doing away with our old general property tax system.

There are only a few statements that need be made in conclusion. Under the present general property tax provisions of our Constitution, much property, and particularly intangible personal property, escapes and will continue to escape taxation. Better tax systems have lately been developed but cannot be put into operation under our present Constitution. For example, it may be desirable to permit separate classification of railroad property for taxation, and to place in the Constitution express authority to levy a graduated income tax. The purpose of this discussion is merely to present that situation. Some of the difficulties would have been met by the proposed amendment of 1916, but that change would probably not have been as comprehensive as it should have been. Just what modification of the revenue article of the Constitution shall be made is a

[17] Session Laws, 1915, page 731.
[18] 281 Ill. 17, (1917).

question first, for a convention, and finally for the people of the State who will vote on the work of a convention. It is probable that the proposed changes in the tax system, if changes are made by a convention, would be submitted to the people separately for their ratification or rejection.

THE INITIATIVE AND REFERENDUM.

"Defined in general, the initiative is a scheme whereby a small percentage of the voters may initiate a law and secure its adoption upon ratification by popular vote; and the referendum is a plan whereby a small percentage of the voters may require the reference of any act of the Legislature to the electorate for approval or rejection."[1] This definition conveys a general idea of the initiative and referendum, but it would be impossible in any one definition to describe these two methods of popular participation in legislation in all the various forms in which they have been adopted in a number of states.[2]

President Lowell says that the referendum was adopted to express public opinion for two reasons: "The objects sought in the use of the referendum as a means of expressing public opinion, instead of relying upon the elected Legislature to express it, may be brought under two general heads. One of these is a fear that the representatives cannot be trusted to do so faithfully * * * Another reason for resorting to the referendum as a method of expressing public opinion arises from the confusion of issues in a general election to which we have already referred. An election means that the voters on the whole prefer one candidate or one party to another; yet they may not agree with all the points in the programme, and the referendum gives them a chance to separate the issues, passing a distinct judgment on each of them by itself."[3]

The referendum in several of its forms is not new to the people of this nation. It has long been the practice to submit the work of a constitutional convention to the people for ratification and to submit constitutional amendments proposed by the Legislature to the voters for approval. So firmly has this practice become imbedded in our form of government that we now accept it as a matter of course. The Constitution forms our fundamental law and should have the direct approval of the people who are going to be governed by it.

Another form of the referendum with which we are now well acquainted is the referendum as provided for in our Constitutions on certain questions. Our own Constitution affords several illustrations of this form. It provides that "No act of the General Assembly authorizing or creating corporations or associations with banking powers * * * nor amendments thereto, shall go into effect * * * unless the same shall be submitted to a vote of the people * * * and be approved by a majority of all the votes cast at such election for or

[1] Beard and Schultz, Documents on the Initiative, Referendum and Recall, page 20.
[2] Beard and Schultz, Documents on the Initiative, Referendum and Recall, page 20.
[3] Lowell, Public Opinion and Popular Government, pages 155 and 157.

against such law."[4] In compliance with this requirement the amendment to "An Act concerning corporations with banking powers,"[5] adopted by the Fiftieth General Assembly, will be submitted to the voters at the general election on November 5, 1918. The Constitution also provides that the State shall not contract debts in excess of $250,000 "unless the law authorizing the same shall, at a general election, have been submitted to the people and have received a majority of the votes cast for members of the General Assembly at such election."[6] Under this provision the law providing for the $60,000,000 road bond issue will be submitted to the people at the regular November election of this year.[7]

And still a third form of the referendum is local in nature, such as a law to become effective in a certain territory upon ratification by the voters of that district. Our local option liquor law is an example.

These now well known forms of the referendum have constituted an historical foundation for the general referendum which has been adopted in this country only in recent years. It was first adopted in South Dakota in 1898, although not called into use by the people of that state until a number of years later. Since then it has spread generally throughout the west and to scattered states farther east: South Dakota, Utah, Oregon, Nevada, Montana, Oklahoma, Maine, Missouri, Arkansas, Colorado, Arizona, New Mexico, California, Ohio, Nebraska, Washington, Idaho, Michigan, North Dakota and Maryland.

But the referendum can have only a negative operation; it is in the nature of a popular veto on acts passed by the Legislature. For the affirmative enactment of laws and constitutional amendments, the initiative was devised. The same reasons which prompted the adoption of the referendum played an important part in the adoption of the initiative. But unlike the referendum, it has not been preceded by any similar institution in our political history. The initiative has been adopted in the following states: South Dakota, Oregon, Montana, Oklahoma, Maine, Michigan, Missouri, Arkansas, Colorado, Arizona, California, Ohio, Nebraska, Nevada, Washington, Mississippi, North Dakota and Utah.

And although the initiative and referendum were originated for the purpose of accomplishing different objects, they have been adopted jointly in nearly every state which has entered this field of popular government. All states which have adopted the initiative have also adopted the referendum. And only two, New Mexico and Maryland, have adopted the referendum without the initiative.

Oregon was the first state to use the initiative and referendum to any great extent. The Oregon plans are typical of the simple forms of the initiative and referendum as originally adopted:

> "The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject

[4] Constitution of 1870, Article XI, Section 5.
[5] Session Laws 1917, page 206.
[6] Constitution of 1870, Article IV, Section 18.
[7] Session Laws 1917, page 696.

the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety) either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded." [8]

The more recent constitutional amendments providing for the initiative and referendum have made certain changes in the original forms, and have generally been more complicated throughout. Ohio in 1912 adopted an amendment which is in substance as follows:

(1) Initiation of constitutional amendments. The petition is to be signed by ten per cent of the electors. It is then to be filed with the secretary of state for submission directly to the people at the next general election occuring subsequent to ninety days after the filing of such petition.

(2) Initiation of statutes. A bill may be introduced in the general assembly by a petition signed by three per cent of the electors. If passed in the original or an amended form, it is subject to the referendum. If not passed, if passed in an amended form, or if no action is taken within four months, submission to the voters in either the original or amended form may be compelled by a supplementary petition containing signatures of three per cent in addition to those signing the original petition.

(3) Referendum on statutes. No law, with certain exceptions, shall go into effect for ninety days. During that time a referendum may be demanded by a petition signed by six per cent of the electors.

And generally, "upon all initiative, supplementary and referendum petitions * * * it shall be necessary to file from each of one-half of the counties of the state, petititions bearing the signatures of not less than one-half of the designated percentage of the electors of such county." [9]

The Massachusetts Constitutional Convention, now in session, has proposed a still more detailed plan for the initiative and referendum:

(1) All petitions are first signed by ten qualified voters. The attorney general passes on the form, decides whether it is substantially the same measure as has been submitted within three years, and decides whether it contains subjects upon which popular legislation can be had.

[8] Constitution, Oregon, Article IV, Section 1.
[9] Constitution, Ohio, Article II, Sections 1 to 1g.

(2) Initiation of constitutional amendments. The above steps having been taken, the petition must be signed by twenty-five thousand voters. The amendment as proposed may be amended by a three-fourths vote of the General Court. If it receives a favorable vote of one-fourth of the members, it is referred to the next General Court; and if it again receives a favorable one-fourth vote, it is submitted to the people. To carry, it must receive not less than thirty per cent of the total vote cast at the election and, of course, a majority of those voting on the question.

(3) Initiation of statutes. The petition must, in addition to the procedure described under (1), be signed by twenty thousand voters. It is then presented to the General Court. If not passed by the General Court in the original form, its submission to the people may be required by five thousand additional signatures. To pass, it must receive not less than thirty per cent of the votes cast at the election, and a majority of the ballots cast on the question. Slight amendments to the original law may be made, after the General Court has failed to pass it, by a majority of the original ten signers, and submission to the voters again enabled by five thousand additional signatures.

(4) Referendum. With reference to a law, the suspension of which is requested, the petition must be signed by fifteen thousand voters.

As to an emergency law or a law, the suspension of which is not asked, the petition need be signed by only ten thousand voters. To defeat, the negative vote must be a majority of those voting on the question and not less than thirty per cent of the total number of votes cast at the election.[10]

Illinois enacted in 1901 its "Public Policy Law." This law provides that on a petition signed by ten per cent of the registered voters of the State "it shall be the duty of the proper election officers * * * to submit any question of public policy so petitioned for * * *"[11] Since it has been in effect, twelve important questions have been submitted to the voters of the State. These are, of course, mere expressions of opinion and lead to no concrete results in themselves.

In 1911 a resolution proposing an amendment to the Constitution providing for the initiative and referendum was adopted by an affirmative vote of forty-nine in the Senate, but failed in the House of Representatives by a very small margin. The same resolution was again passed in the Senate in 1913 by an affirmative vote of forty but again failed by a small margin in the House of Representatives. The text of this proposed amendment is as follows:

"Resolved, by the Senate of the State of Illinois, the House of Representatives concurring therein, That there shall be submitted to the electors of this State for adoption or rejection at the next election of members of the General Assembly, a proposition to amend Article IV of the Constitution of this State by adding thereto an additional section to be known as section 35, to read as follows:

[10] Convention 1917, Massachusetts, Documents, Number 375.
[11] Hurd's Revised Statutes, 1915-16, Chapter 46, Section 428.

Section 35. The people reserve power to propose and to enact laws as herein provided. Eight per cent of the electors of the State may propose an Act by initiative petition, verified as to signatures, and filed with the Secretary of State not less than thirty days prior to the date of convening of any regular session of the General Assembly. The Secretary of State shall transmit a certified copy of the proposed Act to the House of Representatives and to the Senate at the convening of the next regular session of the General Assembly, and the same shall be treated as a bill introduced in the name of the people. Unless such proposed Act shall, without change, become a law by regular legislative enactment within one year after the date of convening of the General Assembly, the Secretary of State shall submit the same by its title to the electors at the next general election: *Provided*, that if a proposed Act shall be placed upon its final passage in each house, and shall fail in each house to receive the affirmative votes of one-fourth of the members elected, it shall not be so submitted. If a proposed Act, when submitted to the electors, shall be approved by a majority of the electors voting on the proposition it shall become a law, and take effect on the first day of January, next, thereafter.

All laws enacted under the provisions of this section may be subsequently amended or repealed by the General Assembly, and they shall be subject to the same constitutional provisions and limitations as are Acts passed by the General Assembly: *Provided*, such provisions and limitations are not inconsistent with the provisions of this section.

The people reserve power to reject laws passed by the General Assembly, and to stay the time of their taking effect, as herein provided. Five per cent of the electors of the State, by a referendum petition, verified as to signatures, and filed with the Secretary of State before the taking effect of an Act, may require that such Act shall not take effect until submitted to the electors. The Secretary of State shall submit such Act by its title to the electors at the next general election, and if rejected by a majority of the electors voting on the proposition it shall become void, otherwise it shall take effect on the first day of January, next, thereafter. Acts passed in case of emergency by a vote of two-thirds of all the members of each house, and Acts making appropriations for the ordinary and contingent expenses of the government or of any existing institution of the State, shall not be subject to referendum petition. All Acts shall take effect as provided in section 13 of this Article, except that no Act subject to referendum petition shall take effect within less than thirty days after it becomes a law: *And, provided, further*, that one per cent of the electors of the State, by referendum petition, verified as to signatures and filed with the Secretary of State, before the taking effect of an Act may require that such Act shall not take effect until ninety days after it became a law, pending the filing of a petition supplementing and completing the said referendum petition.

The Governor, Attorney General, and Secretary of State shall constitute a board to pass upon the sufficiency of every initiative

and referendum petition, and when approved by them its sufficiency shall not be questioned in any court. A finding of the board that a petition is not sufficient may be reviewed upon a petition for mandamus filed in the Supreme Court within thirty days. The total vote cast at the last general election shall be the basis upon which the required per cent of electors herein specified shall be estimated, and not less than fifty per cent of the signatures required shall be electors residing outside of the county of Cook. This amendment shall be self-executing, but appropriate legislation may be enacted regulating the details of its operation."[12]

Certain comparisons of initiative and referendum schemes should be made to emphasize the more important features. It is to be noted that the Oregon plan provides for the direct initiation of laws, while the Ohio plan and the Massachusetts and Illinois proposed plans provide for indirect initiation. The Oregon plan is typical of the initiative and referendum schemes as adopted by the states which first entered this field of popular legislation; the Ohio plan is in the form which has recently become more popular. The exponents of the direct initiative say that the indirect initiative needlessly delays action on a measure, and that if you are going to permit the people to initiate laws, it is valueless to require them to submit the measure first to their agent, the Legislature. Those in favor of the indirect method admit that there is delay, but think it is time well spent. They say that discussion in the Legislature on a proposed law will develop both its good and bad points; and that discussion and amendment will do much to perfect the form of the measure.

This brings up the rather important question of satisfactory expertness in the drafting of popularly initiated measures. It is not a complete answer to say that so far the average initiative measure has been in many cases as well drawn as the average legislative measure. More and more perfection is being demanded in bills passed by the Legislatures, and recently important progress has been made along this line in a number of states. Steps should be taken to insure the same perfection in initiative measures. Some states, Oregon for example, require either by constitutional provision or by statute that the attorney general or some other state officer, shall prepare the title of the bill. The proposed plan in Massachusetts provides that the attorney general "shall certify that the measure is in a proper form for submission to the people."[13] This is not explicit, but if it is intended that the attorney general may pass on the draftsmanship of the measure and revise the form if necessary, a weakness in popular legislation will have been met. At any rate, there seems to be no good reason opposed to the principle that the form of a measure would have to be approved, and perhaps corrected, by some impartial state officer or board, before submission to the voters. In so far as the indirect initiative has the effect of perfecting the form of the bill by its requirement that the Legislature be given an opportunity to pass the measure demanded, it is an improvement over the initiation of measures without any restrictions as to their form.

[12] Senate Journal 1913, page 817.
[13] Convention 1917, Massachusetts, Documents, Number 375.

Another perplexing question is what number of signatures shall be required on the petitions. Shall it be a numerical or percentage minimum? This is not really so important: either can be so fixed that it is certain that there is real and substantial public sentiment behind the measure. In this connection it should be borne in mind that the labor of securing the signatures of ten per cent of the voters in a state with a small population is much less than in a state with a large population; and yet it would be unwise to make the per cent so low that it would not be an indication that there is real public opinion in favor of the measure.

On a referendum the number varies from five per cent in Oregon, the proposed plan in Illinois, and other states, to ten per cent in North Dakota and other states. But Maine and Maryland require the signatures of not less than ten thousand voters. The proposed plan in Massachusetts would require fifteen thousand signatures on measures the suspension of which is asked, but only ten thousand on emergency laws or laws the suspension of which is not asked.

For the indirect initiative the per cent varies from three in Ohio to ten in North Dakota. The defeated plan in Illinois would have required eight per cent. Maine requires twelve thousand and Massachusetts would require twenty thousand, and five thousand additional for reference of the measure to the voters, when the action of the General Court is not satisfactory. For the direct initiative the per cent varies from five in Missouri, to ten in Arizona. Mississippi requires only seven thousand five hundred signatures.

It may be that public opinion in a certain portion of a state is in favor of a certain measure, but that the remainder of the state is decidedly opposed to it. To meet this, Missouri requires that an initiative petition be signed by eight per cent and a referendum petition by five per cent, of the legal voters in each of at least two-thirds of the congressional districts of the state. In Wisconsin it was at one time proposed that no more than one-half of the petitioners shall be residents of any one county.[14] The Massachusetts proposed plan provides "that not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county;" the Illinois plan would have provided that "not less than fifty per cent of the signatures required shall be electors residing outside of the county of Cook," and Ohio provides that it shall be necessary to file from each of one-half the counties of the state petitions bearing the signatures of not less than one-half the designated percentage of the electors of such county.

If the initiative and referendum are to be adopted, what proportion of the electors taking part in the election should be required to enact an initiated measure or to reject a measure on which a referendum has been demanded? In Colorado in 1912 the total vote on one measure was only 24.8 per cent of the total number of ballots cast at the election, and on another the successful negative vote was only 14.3 per cent of the total number of ballots.[15] Under the provision that a measure may be adopted or rejected by a majority of those voting on it, there is danger that this bare majority will not represent public opinion in

[14] Annals of the American Academy of Political and Social Science, Vol. 43 (1912), page 207.
[15] Lowell, Public Opinion and Popular Government, pages 189, 215.

any true sense. On the other hand, because of the difficulty of arousing the same interest in a campaign for a law as in a campaign for an election of state officers, to require that a measure receive for adoption a majority of the votes cast at a general election would make the plan practically unworkable. The Massachusetts plan compromises by requiring that the majority shall not be less than one-third of the highest number of votes cast at the election.

It would seem that if laws are to be enacted or rejected directly by the people, as much light as possible should be thrown upon the issues which are submitted. And so some states have considered it advisable to circulate arguments for or against a measure some time before the election in order to afford the voter an opportunity to familiarize himslf with the issue. This formal preparation and distribution of arguments upon measures is required by the Constitutions of a number of states, but perhaps this is more properly a matter of detail to be provided for by statute.

The most important question of all is that as to the proper province of popular legislation. Shall the initiative be made to apply to constitutional amendments as well as to statutes? With few exceptions the states which have adopted the initiative do apply it to constitutional amendments. If it is desired to have the proposal of constitutional amendments more difficult than the proposal of laws, and yet to permit the initiation of amendments, both could be accomplished by requiring a larger percentage of signers to a petition and perhaps also by requiring the adoption of amendments by a larger percentage of the electors.

Is the initiative fitted for the proposal of measures on all sorts of subjects? "A popular vote is of little value (1) if the questions submitted are so trivial or so local in character as not to be of interest to those to whom they are submitted, (2) if the questions are so complicated and technical that the average voter has no satisfactory means of informing himself regarding them, or (3) if the questions are submitted in such great numbers that the voter, even if he might possibly render a satisfactory judgment upon any one of them, cannot inform himself regarding the merits of all the measures upon which he must pass."[16] But "any specific limitation upon the number or character of measures of legislation submitted through the initiative and referendum must almost necessarily weaken these institutions as means of obtaining desired legislation."[17] So it seems that if the initiative and referendum are to be adopted, the character of popular legislation must be left to the good judgment of the electorate, though much fault can be found with measures which have been submitted to the people in a number of states.

President Lowell of Harvard University, after a critical review of the initiative and referendum has made the following statement regarding these institutions:

"All this does not mean that the referendum and initiative will not prove valuable when used in the appropriate way. It means simply that they are not so perfect as some of their advocates appear

[16] Annals of the American Academy of Political and Social Science, Vol. 43 (1912), page 209.
[17] Annals of the American Academy of Political and Social Science, Vol. 43 (1912), page 209.

to assume, and that they ought to be used with careful attention to the conditions in which they can be successfully applied * * * That direct popular action upon laws, when wisely and scientifically applied, will prove highly useful in certain conditions of society we may well believe without expecting it to usher in the millennium. All theories based on the assumption that the multitude is omniscient are fallacious, and so are all reforms that presuppose a radical change in human nature."[18]

[18] Lowell, Public Opinion and Popular Government, pages 231, 233.

THE SHORT BALLOT.

The term "short ballot" really includes two very general notions: (1) that with the multiplication of governmental functions, too many officers have become popularly elective, the result being that the voter can know little of the qualifications of the greater number of candidates for whom he votes; from this, it is concluded naturally that the number of elective officers should be reduced; (2) that with the present great number of elective officers, responsibility to the people of such officers tends to be lessened, because the voters cannot know in detail the qualifications of each such officer or the manner in which he performs his duties. From this, it would follow that only the more important officers should be elective; that they should be given power to appoint lesser officers, and be held responsible individually for the conduct of governmental affairs. The government of the United States is organized in accordance with the principle of the "short ballot;" the governments of the State of Illinois and of counties and towns in Illinois, are organized upon the plan of having a great number of elective officers substantially independent of each other. The question is not one of reducing popular control over government, but of organizing popular control effectively. The government of the United States is as effectively controlled by the people as are the governments of the state, city and county.

The development in state, county and local government toward a large number of elective officers has been a gradual one. During the early part of the nineteenth century the number of constitutional officers in the states was not nearly so large as at present. An explanation is not difficult. Because the country was then much less developed in every respect, state activities and interests were less numerous, and hence the need for officers not nearly so great. In our own Constitution of 1818 there were only fourteen officers specifically provided for (counting all the members of the General Assembly as one, and all judges of both the Supreme and inferior courts as one). In the Constitution of 1870 there are about double that number.

Before 1848 the manner of filling many of these offices was very different from our present method. Great faith was placed in the legislative bodies of that time. They and only a very few other officers were elected by popular vote. Most of the remaining officers were appointed by the Legislatures, or in some instances that responsibility was shared with the chief executive. This was true in a marked degree in this State. Under the Constitution of 1818 the constitutional offices were filled in the following manner: *elected*—Governor, Lieutenant-Governor, members of the General Assembly, sheriff, coroner,

and county commissioners; *appointed by the General Assembly*—the judges of the Supreme and all inferior courts, Attorney General, State Treasurer, Auditor of Public Accounts, and public printer or printers; *appointed by the Governor* (by and with the advice and consent of the Senate)—the Secretary of State. The clerks of the Supreme and circuit courts were appointed by the judges of those courts. It thus appears that of the nine more important officers, who performed duties for the State as a whole, five were appointed by the General Assembly. The Governor's power of appointment in the only case in which he had it, that of the Secretary of State, was so limited by the concurrent power of the Senate that he could not remove that officer for any reason whatsoever.[1]

Section 22 of Article III of the Constitution of 1818 in terms gave the Governor a general appointing power:

> "The Governor shall nominate and (by and with the advice and consent of the Senate) appoint all officers whose offices are established by this Constitution, or shall be established by law, and whose appointments are not herein otherwise provided for: *Provided, however*, that inspectors, collectors and their deputies, surveyors of the highways, constables, jailers and such inferior officers whose jurisdiction may be confined within the limits of the county, shall be appointed in such manner as the General Assembly may prescribe."

But this section was followed by another which provided that:

> "An Auditor of Public Accounts, an Attorney General, and such other officers for the State as may be necessary, may be appointed by the General Assembly, whose duties may be regulated by law."[2]

Section 22, purporting to give the Governor a rather broad power, was so limited by the later section, and the practical construction placed upon this later section by the Supreme Court, that the Governor in fact was without any real appointing power under section 22.

> "The Constitution of this State, after giving the appointment of clerks to the courts, and that of almost all the other officers to the people and the Legislature, provides by the twenty-second section of the third article, that 'the Governor shall nominate, and by and with the advice and consent of the Senate, appoint all officers whose appointments are not herein otherwise provided for;' with the further proviso that inspectors, etc., and all other officers whose jurisdiction is confined to the county, may be appointed in such manner as the General Assembly shall prescribe. Although the Constitution provides, I believe, for the appointment of all the officers it creates, and gives to the Legislature the right of prescribing the manner of appointing all county officers, still this section would have left to the Governor some chance of appointment to office, besides those specially given him, if this was all that had been said upon the subject. But it is not. By the tenth section of the schedule, it is declared, that 'an Auditor of Public Accounts, an Attorney General, and such officers for the

[1] Field v. People, 2 Scammon 79 (1839).
[2] Constitution, 1818, Schedule, Section 10.

State as may be necessary, may be appointed by the General Assembly, whose duties may be regulated by law.'

The practical construction which this section has received, takes from the Governor all appointments except such as are expressly given him." [3]

In other words, the Constitution of 1818 might have read in so many words that the Governor had the power to appoint in those cases where it was expressly given him, and the General Assembly had the general power to appoint in all other instances.

But this system of appointment by large bodies was not employed long before it was found to be unsatisfactory. After treating the experience of New York, in detail, Professor Beard says:

"In the other commonwealths the appointing power was vested in the legislature or in the governor and senate, or distributed in such a way as to confuse responsibilities, entangle the legislature in administrative functions and prevent the leading state officers from falling wholly under the control of any person or body of persons. The natural consequence seems to have been, in nearly every case, that the appointing power passed from the public authorities in which it was vested by law into the hands of organizations unknown to the law and only slightly or not at all subject to the pressure of public opinion. Appointment by the legislature on a large scale was a new experiment in American politics, for the power had not been generally exercised by colonial legislatures; and it required very little experience to demonstrate that appointment by a numerous assembly was about the most successful way of destroying responsibility that could have been devised." [4]

Illinois' experience showed that this method of appointment was far from satisfactory.

"The Constitution [1818] was not submitted to a vote of the people for their approval or rejection; nor did the people have much to do with the choice or election of officers generally under it, other than of Governors, the General Assemblies, sheriffs and coroners * * * The electors or people were not trusted with the choice of State officers, other than mentioned; nor of their judges, either Supreme, circuit, or probate; nor of their prosecuting attorneys, county or circuit clerks, recorders, or justices of the peace; the appointment of nearly all these being vested in the General Assembly, which body was not slow to avail itself of the powers thus conferred, to their full extent. The language of the schedule was, 'An Auditor of Public Accounts, an Attorney General, and such other officers of the State as may be necessary, may be appointed by the General Assembly, whose duties may be regulated by law.' It is said to have been a question for many years, in view of this language, what was 'an officer of the State.' The Governors were for a time allowed to appoint State's attorneys, recorders, State commissioners, bank directors, etc., but the Legislature afterwards vested by law the appointment of all these and many more in themselves. Occasionally, when in full political

[3] Field v. People, 2 Scammon 79 (1839), page 113.
[4] Beard, The Ballot's Burden, Political Science Quarterly, Vol. XXIV, No. 4, page 594.

accord, the Governor would be allowed the appointing power pretty freely, to perhaps be shorn of it by a succeeding Legislature. In the administration of Duncan, who had forsaken Jackson and incurred the displeasure of the dominant party, the Governor was finally stripped of all patronage, except the appointment of notaries public and public administrators. It was a bad feature of the Constitution; it not only deprived the people of their just rights to elect the various officers as at present, but led hordes of place hunters to repair to the seat of government at every session of the Legislature, to besiege and torment members for office. Indeed, this was the chief occupation of many an honorable member. Innumerable intrigues and corruptions for place and power were indulged." [5]

By the time the Constitutional Convention of 1848 met, the State was convinced that appointment by the General Assembly had proven a failure. Sweeping changes were made by the Constitution adopted at that time. Most of the officers named in the Constitution of 1818 were retained, but all were now made elective: Governor, Lieutenant-Governor, members of the General Assembly [illegible] their deputies, Auditor of Public Accounts, State Treasurer, ju[illegible]ch inferme and circuit courts, clerks of the Supreme and circuit co[illegible] sheriffs. To these were added and also made elective: county judges, justices of the peace, clerks of the county court, and State's attorneys. But of this group of new constitutional officers none had heretofore been appointed by the Governor. The county judges replaced the county commissioners' court, the members of which had been elected; justices of the peace had by statute been elective; the clerk of the county court replaced the clerk of the county commissioners' court, who had formerly been elected; the clerks of the Supreme and circuit courts had up to that time been appointed by the judges of those courts; State's attorneys replaced the old circuit attorneys who had been appointed by the General Assembly.

The whole constitutional change was a complete curtailment of the appointing power of the Legislature. It is true that the Governor's limited appointing power in the case of Secretary of State was taken from him but this was really only incidental to the main movement. As a further indication of the desire to take all appointing power from the General Assembly, the following section was placed in the Constitution of 1848:

> "The Governor shall nominate and, by and with the advice and consent of the Senate, (a majority of all the senators concurring) appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointments are not otherwise provided for; and no such officer shall be appointed or elected by the General Assembly." [6]

This section is retained with only minor changes in the Constitution of 1870. [7] Note that the appointment, by the General Assembly, of any officer, created either by the Constitution or by statute, is

[5] Davidson and Stuve, History of Illinois, page 297.
[6] Constitution 1848, Article IV, Section 12.
[7] Article V, Section 10.

absolutely prohibited.[8] This prohibition coupled with the continuation of the grant of appointing power to the Governor makes the grant to the Governor a real one. It also indicates forcibly that the movement was one to take away all appointing power from the General Assembly, but that there was no lack of confidence in the Governor or in his power satisfactorily to discharge this duty.

There were certain new offices created by the Constitution of 1870, and all these were made elective.

Since the adoption of the Constitution of 1848, popular election of numerous officers has been an essential element of our State government, but with the great increase in State functions, it has, of course, been absolutely impossible to extend the principle of election to all those who are to do the State's work. Clearly, when the State comes to have six thousand or more officers and employees, the attempt to elect all of them would be a foolish and impossible task. Where shall the line be drawn between those who are appointive and those who are elective, in order to assure the most effective popular control over government? All cannot be elected. The effort to elect a great number of the more important State officers would also result in so confusing

in nearly e[illegible]ot know what he is doing.

public a[illegible]to how many State officers should be elective is, of co[illegible]ely tied up with that as to how many local officers should be elective; for the amount of burden upon the voter at the election depends on the number of those upon the ticket, irrespective of whether they are candidates for State or local office. The difficulty of voting intelligently is increased with each increase in the length and size of the ballot.

The ballot for the thirteenth and thirty-fourth wards of the sixth congressional district of Chicago in 1906, is described as follows by Professor Beard:

> "It is two feet and two inches by eighteen and one-half inches; and it contains 334 names distributed with more or less evenness as candidates for the following offices: State Treasurer, State Superintendent of Public Instruction, Trustees of the University of Illinois, Representatives in Congress, State Senator, Representatives in the State Assembly, sheriff, county treasurer, county clerk, clerk of the probate court, clerk of the criminal court, clerk of the circuit court, county superintendent of schools, judge of the county court, judge of the probate court, members of the board of assessors, member of the board of review, president of the board of county commissioners, county commissioners (ten to be elected on general ticket), trustees of the sanitary district of Chicago (three to be elected), clerk of the municipal court, bailiff of the municipal court, chief justice of the municipal court, judges of the municipal court (nine to be elected), judges of the municipal court for the four year term (nine to be elected), judges of the municipal court for the two year term (nine to be elected)."[9]

[8] Applied: Harward v. St. Clair Drainage Co., 51 Ill. 130 (1869).
[9] Beard, The Ballot's Burden, Political Science Quarterly, Vol. XXIV, No. 4, page 599.

For the general election of 1904 the ballot used in Chicago contained four hundred and ten names, and each general election in a presidential year presents a similar ballot. The ballot in Chicago is longer than elsewhere, but much the same situation exists in other parts of the State. Theoretically, each voter knows the qualifications of each of the candidates for each office, and exercises an intelligent choice as to the candidates upon the ballot. But this theory fails in practice, because the voter cannot possibly know the qualifications of each of several hundred candidates, or even of a considerable number of them. In fact, it would be impossible for him to name all those for whom he voted, if he were asked to do so immediately upon leaving the polls.

Normally, the voter (either in primary or final election) will know something about the candidates for a few important offices, and as to these will exercise an independent judgment, but as to the others he must act blindly, at least to a very great extent. In the less thickly populated sections of the State, the voter's problem is not so serious as in the cities, because some acquaintance with the merits of numerous candidates may more easily be obtained, but the tendency in Illinois has been toward a steadily increasing city population.

The "short ballot" has been advocated as a means of developing a more effective popular control over government. The term itself is simple, but the changes included within it are important. It contemplates a radical reduction in the number of elective offices. The principles of the short ballot are these: (1) "That only those offices should be elective which are important enough to attract (and deserve) public opinion."[10] In a general way, all offices may be divided into (a) those which are policy-determining, and (b) those which are policy-executing offices. The first only should be filled by election.[11] (2) "That very few offices should be filled by election at one time, so as to permit adequate and unconfused public examination of candidates, and so as to facilitate the free and intelligent making of original tickets by any voter for himself unaided by political specialists."[12]

In policy-executing offices the public is really only concerned with one thing—the efficient administration of that office, that is, the efficient execution of policies that have been decided upon by others. The determination of policies should reflect the will of the people. To accomplish this best, such an officer should be elected directly by the people and be answerable directly to them. The issue of the election campaign is not limited to particular qualifications but includes the question whether or not the candidate has endorsed policies acceptable to the public. The requirement that only policy-determining officers should be elected accomplishes a two-fold object. The number of elective offices is reduced, for there are really only a few such offices in each political unit. This helps put the duty of voting within the voter's ability, since he has time to become acquainted with the qualifications of only a limited number of candidates. Quite as important, the policy-determining offices—such as the Governor and mayor—

[10] Principles of the short ballot as endorsed by the National Short Ballot Organization. (1915).
[11] American Political Science Association, Vol. VI (1909), page 73.
[12] Principles of the short ballot as endorsed by the National Short Ballot Organization. (1915). For a discussion of short ballot principles with specific reference to Illinois, see The Short Ballot in Illinois. Report of the Short Ballot Committee of the City Club of Chicago. (1912).

are the ones which naturally attract and hold the attention of the voter. This is more important than might at first seem to be the case. Take any election in a populous community or large district in which the candidates are not personally known to many of the voters. Ordinarily, interest is concentrated on the more important offices. Candidates for them not only argue for their party platform, but for their own personal qualifications and policies. But the candidates for minor offices emphasize not so much their own qualifications as those of the "heads" of their tickets. Unless the vote be very close, they win or lose with those heads.

Under the proposed "short ballot," plan the voter would concentrate his attention upon candidates to fill a few important offices; and the person elected to an important office would be permitted to appoint those who should administer affairs in detail. The important officer, it is urged, might then be held by the people to a more complete responsibility for success or failure in the conduct of governmental business.

The second general principle of the "short ballot" is, that only a few offices should be filled by election at one time. What has been said before with regard to the advantages to be gained by reducing the number of elective offices, of course, applies here. In fact, this principle is hardly more than an application of the more general principle of reducing the number of elective offices. Assume that we have selected certain policy-determing officers in each political unit to be elected. Since they will probably all hold office for a term of longer than one year, there is an opportunity to distribute these elections through several years, rather than grouping most of them together perhaps every two years. The advantage of having to fill only three or four offices at one election, instead of sixteen or eighteen, is apparent.

It is an easier matter to state the principles of the "short ballot" than to apply them to the government of the State. Who should be elected and what offices shall be filled by appointment in the State, the county, the township and the city or village? If a convention is to propose a "short ballot" policy, this would be the most serious question to be decided. The only purpose here is to point out the nature of the problem to come before a convention, if it is to deal with the difficulties presented by the multiplication of elective offices.

WOMAN SUFFRAGE.

Woman suffrage or equal suffrage contemplates the enfranchisement of women—giving women the right to vote. Other suffrage qualifications, such as citizenship, age and residence, are not involved in a discussion of the doctrine of equal suffrage. The advocates of that doctrine desire nothing more than political equality between men and women.

In recent years perhaps no subject has been more thoroughly discussed than the question of giving the ballot to women. The equal suffrage movement, however, is by no means a recent development. The publication of Mary Wollstonecraft's book "Vindication of the Rights of Women" in 1792 may be said to mark its beginning in England. The book was subjected to a deluge of criticism and ridicule, but after its publication, the movement gathered force. In 1797 Charles Fox, a prominent English statesman, expressed the conviction that certain classes of women could not only exercise the right of suffrage more intelligently but that they had a greater right to vote than certain classes of men. In 1835 Samuel Bailey strongly championed the cause of equal suffrage in his work "The Rationale of Political Representation," and Benjamin Disraeli in 1848 declared in the House of Commons that there was no reason for denying women the right to vote. John Stuart Mill, however, was the most influential advocate of equal suffrage in England. In 1867 as a member of the House of Commons he strongly advocated the extension of the right of suffrage to women and in 1869 he published his famous book "The Subjugation of Women." As early as 1869, largely through the influence of Mr. Mill, Parliament granted certain restricted suffrage rights to the women of England. Since that time a series of acts of Parliament has gradually increased the voting privileges of women until today the right to vote for members of Parliament constitutes practically the only barrier to political equality between the men and women of Great Britain.[1] A bill giving women the right to vote for members of Parliament is now pending and will, in all probability, be passed in the near future.

The woman suffrage movement began earlier in the American colonies than in England and may be said to have had its birth in this country. In 1647 Margaret Brent petitioned the colonial Legislature of Maryland for representation in that body. At that time ownership of property was a basis of representation in the Maryland Legislature and her petition, which was denied, was based on the fact that she was the owner of property in that colony. For many years prior to 1780 the women property owners in the colony of Massachusetts

[1] See Horack, Equal Suffrage in Iowa, Iowa Applied History Series, page 21.

were allowed to vote for all elective officers.[2] The Constitution of Massachusetts, adopted in 1780, materially restricted the voting privileges of women. The first Constitution of New Jersey, adopted in 1776, accepted the principle of equal suffrage but, in 1807, the suffrage was limited to white male citizens.[3] Until 1848, however, when the first woman's rights convention was held at Seneca Falls, N. Y., there was no concentrated or organized effort to further the cause of equal suffrage. This may have been due to the fact that until the middle of the nineteenth century the demand for equal suffrage was overshadowed by the struggle for universal manhood suffrage. But, whatever may have been the cause for the lack of cooperation among the advocates of equal suffrage prior to 1848, the actual contest for woman suffrage in the United States began with the convention in New York. In the years between 1848 and the beginning of the Civil War the movement made considerable progress although those who favored woman suffrage were then generally regarded as radicals or extremists.

During the Civil War the movement necessarily gave way before the country's more pressing needs. But in 1866 the struggle began again when strenuous, though unsuccessful, efforts were made to strike out of the proposed fourteenth amendment to the United States Constitution the word "male." Undaunted by the failure of their attempt to modify the fourteenth amendment, the advocates of equal suffrage sought to have the word "sex" inserted after the word "color" in the fifteenth amendment to the Federal Constitution, which would have made that amendment read as follows:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, *sex*, or previous condition of servitude.

This attempt to obtain Federal recognition of the principle of equal suffrage failed also. Since that time Congress has been appealed to on several occasions to propose an amendment to the United States Constitution which would secure political equality for the women of this country. And these appeals have not been without response. In 1884 a minority of the Judiciary Committee of the House of Representatives recommended such an amendment,[4] and, in the Sixty-third Congress, the Woman Suffrage Committee of the Senate, on June 13, 1913, reported favorably on the following proposed amendment to the United States Constitution:

> Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.
>
> Sec. 2. The Congress shall have power, by appropriate legislation, to enforce the provisions of this article.[5]

On January 10, 1918, a resolution favoring an amendment to the United States Constitution, which would give women the same voting privileges as men, was adopted by the House of Representatives. The resolution is now pending before the United States Senate.

[2] See Woman Suffrage, History, Arguments, Results, page 4.
[3] See Woman Suffrage, History, Arguments, Results, page 5.
[4] House Reports, 1st Session, 48th Congress (1883-84), Vol. 5, No. 1330, page 4.
[5] Senate Reports, 1st Session, 63d Congress (1913-15), Vol. 1, No. 64.

The proponents of equal suffrage have not confined their efforts to obtaining Federal recognition of their cause, but have sought the enfranchisement of women by the different states of the Union. And in this field they have been very successful. Only fourteen states deny women the right to participate in any election.[6] In twelve states women have obtained full and complete suffrage rights and may vote at all elections.[7] Twenty-two states permit women to exercise limited voting privileges.[8] In this last class of states women may vote in certain elections such as school or municipal elections. In Michigan and Rhode Island women are allowed to vote for presidential electors. The women of Illinois, Nebraska and North Dakota are entitled to vote not only for presidential electors but for certain municipal, county and state officers as well.

Suffrage qualifications are fixed and prescribed by the Constitutions of the several states. In most cases these instruments, as originally adopted, limited the right of voting to males.[9] The full enfranchisement of women in those states having Constitutions which limit suffrage to men can be accomplished only by constitutional amendment or revision. Several states have already adopted constitutional amendments conferring full political rights upon women. New York, with the adoption of the woman suffrage amendment in 1917, became the twelfth equal suffrage state. In some of these states, however, limited suffrage has been granted to women without constitutional change. For example, the women of Illinois in 1913 were given the right to vote for certain officers although the Constitution expressly limits suffrage to males.

The Constitution of Illinois provides:

> "Every person having resided in this State one year, in the county ninety days and in the election district thirty days next preceding any election therein; who was an elector in this State on the first day of April, in the year of our Lord, one thousand eight hundred and forty-eight, or obtained a certificate of naturalization, before any court of record in this State, prior to the first day of January, in the year of our Lord, one thousand eight hundred and seventy, or who shall be a male citizen of the United States, above the age of twenty-one years, shall be entitled to vote at such election."[10]

It is clear that full political equality between the men and women of this State cannot be established except by constitutional change. And it would seem that the above provision is, under established principles of State constitutional construction, a complete denial of the ballot to the women of Illinois. But in 1913 the Illinois General Assembly passed a law authorizing women to vote for presidential electors and for certain State, county and municipal officers not created by

[6] Alabama, Florida, Georgia, Indiana (but see note 13), Maryland, Maine, Missouri, North Carolina, South Carolina, Pennsylvania, Tennessee, Texas, Virginia and West Virginia.

[7] Arizona, California, Colorado, Idaho, Kansas, Montana, New York, Nevada, Oregon, Utah, Washington and Wyoming.

[8] Arkansas, Connecticut, Delaware, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, Ohio, Oklahoma, Rhode Island, Vermont and Wisconsin.

[9] Wyoming and Utah are exceptions to this rule. The Constitutions of both these states adopted [illegible] prior to their admission into the Union, expressly provide for equal suffrage. Constitution, Wyom[illegible]cle VI, Section 1. Constitution, Utah, Article IV, Section 1.

[illegible]nstitution 1870, Article VII, Section 1.

the Constitution.[11] The constitutionality of the law was immediately challenged. By a divided court the law was upheld. The majority of the Supreme Court judges held that the constitutional provision limiting the suffrage to males applied only to offices created by the Constitution.[12] In their view the constitutional provisions relating to suffrage should not be extended beyond the terms of the Constitution. For officers created by the Constitution only those who possess the suffrage qualifications prescribed by that instrument may vote, but the constitutional limitations relating to suffrage go no further than that; they are not applicable to officers not created by the Constitution. Persons not qualified voters under the Constitution may, nevertheless, be permitted to vote for officers not created by that instrument. Under this reasoning the Act of 1913, which did not purport to give women the right to vote for constitutional officers, was sustained.[13]

The advocates of equal suffrage gained a signal victory in Illinois, but full political equality between men and women has not yet been obtained. The word "male" in section 1 of Article VII of the Constitution constitutes the barrier to the full enfranchisement of the women of this State. In 1915, and again in 1917, the General Assembly was petitioned to submit an amendment to the Constitution which would permit women to vote in all elections in this State, but, in each instance, the petitioners were unsuccessful. Strenuous efforts have already been made in this State for the cause of equal suffrage. The assembling of a constitutional convention would no doubt cause those who favor equal suffrage to increase their activities. The woman suffrage advocates would not overlook such an opportunity; on the contrary the assembling of a convention is sure to be a signal for a vigorous attempt to obtain constitutional recognition of the principle of equal suffrage.

Any attempt to amend the Constitution so as to give women full political equality is apt to meet strong opposition. The Conventions of 1847 and 1869–70 both adopted the plan of requiring the people to

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[11] Session Laws, 1913, page 333.

[12] Scown v. Czarnecki, 264 Ill. 305 (1914).

[13] In 1917 the General Assembly of Indiana passed a law authorizing women to vote for presidential electors and certain state, county and municipal officers. Subsequent to its passage and approval a tax payer filed his bill in equity seeking to enjoin the Board of Election Commissioners in the City of Indianapolis from incurring any expense under the Law of 1917 in connection with the pending municipal election in that city on the ground that the Constitution of Indiana limited suffrage to males and that the General Assembly had no constitutional power to give women the right to vote for the municipal officers of the City of Indianapolis. The lower court entered a decree in accordance with the prayer of the bill and an appeal to the Supreme Court followed. The decision below was affirmed by a divided court. Two of the judges of the Supreme Court held that the General Assembly had no power to give women the right to vote for city officers and refused to follow the Illinois case. These two judges also held that, under the Constitution, the General Assembly could give women the right to vote in school elections but that, although the Law of 1917 did authorize women to vote in school elections, the different provisions of the law were so closely connected that it could not be presumed that the General Assembly would have passed the law without including the unconstitutional provisions, and that therefore the entire law was void. A third judge, in a concurring opinion, held that the General Assembly could not give women the right to vote for the municipal officers of the City of Indianapolis, but he did not pass on the question of permitting women to vote in school elections; nor did he hold that the Law of 1917, in its entirety, was void. The fourth judge dissented.

There would seem to be no question as to the power of the General Assembly of Indiana to authorize the women of that state to vote for presidential electors. The Constitution of the United States provides that "each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress". (Constitution, United States, Article II, Section 1). The judge who filed a concurring opinion did not hold the Law of 1917 void *in toto*. It cannot be said that the law is entirely void. Three judges are necessary to a decision. Only two have held the law void in its entirety. Since the Law of 1917 gives women the right to vote for presidential electors and in school elections and since that law has not been held void *in toto* there is still a possibility that the women of Indiana may vote for presidential electors and in school elections. It may be improper therefore to class Indiana with those states which give women no suffrage rights. See Board of Election Commissioners, etc., v. Knight, 117 N. E. 565 (Indiana Supreme Court, October 26, 1917).

vote separately on proposed constitutional provisions relating to matters of great public interest—that is, in addition to voting on a complete new instrument, the people were asked to vote separately on certain provisions. In 1870 the people voted for or against a complete new Constitution and on several separate provisions such as those relating to minority representation and the Illinois-Michigan Canal. If a convention should favor conferring complete political equality upon the women of this State, it would undoubtedly ask the voters to vote separately on the proposed provisions relating to woman suffrage.

AMENDMENT BY REFERENCE.

The question of amendment by reference grows out of the construction of that clause found in the latter part of section 13, Article IV of the Constitution, reading:

> "And no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act."

For the purposes of this discussion there may be said to be two kinds of amendments. The first may be called an amendment *in form*. As the name implies, by its form it shows that it is an amendment of an existing statute. Here is an example:

> "Be it enacted by the People of the State of Illinois represented in the General Assembly: That section twenty-seven (27) of 'An Act to revise the law in relation to counties,' approved and in force March 31, 1874, as amended by an Act approved May 15, 1903, in force July 1, 1903, be and the same is hereby amended to read as follows:
>
> Sec. 27. Whenever the county board shall deem it necessary," etc.

The second may be called an amendment *in substance*. Such an act is not in form amendatory. On its face it appears to be a new and independent enactment. Suppose an act passed in 1900 provided that in townships there should be elected a township tax collector, that he should be given the township tax books on a certain date, that he should maintain an office within the township for the purpose of receiving tax payments, and that he should give a receipt reading "in payment of taxes as herein set down." Suppose an act, which in form appeared to be an independent act, was passed in 1910, and provided that the township collector should give a receipt reading "in full payment of taxes as herein set down." This act of 1910 would be called an amendment in substance of the act of 1900, because in substance it is no more than an amendment of the prior act.

It is in the sense illustrated by these two examples that the words "amendment in form" and "amendment in substance" will be used.

The above quoted provision of the Constitution admits of two constructions: first, it may be held to prohibit amendments in form only, unless they comply with the requirements of this provision; second, it may be held to prohibit not only amendments in form but also amendments in substance, unless they likewise comply with the requirements of the provision. But the second possible construction must be surrounded with certain limitations. Nearly every new statute more or less incidentally amends in substance some prior statute. To hold, therefore, that every statute, however incidentally

it amends in substance a prior statute, must comply with the requirements of this provision, would so encumber legislation as to practically prohibit it. How materially a new statute may amend in substance a prior statute before it is necessary for it to comply with the requirements of this provision is a matter of judgment. More than that, it is a matter concerning which the judgment of individuals may differ. In our form of government the courts are invested with final judgment on a question of this sort. The General Assembly may exercise its honest judgment, but, if the court disagrees with that judgment, the statute will be held to have violated this provision. But worst of all, no one is capable, not even the Supreme Court, of setting up standards by which it is possible to say definitely how materially an amendment in substance may affect a prior statute before this provision applies. On the other hand, if the clause is construed to apply to amendments in form only, it is possible to say absolutely either that a given act is an amendment or that it is not an amendment.

The purpose of this discussion may be stated as follows: first, to show that for some years after the adoption of the present Constitution this provision was construed to apply only to amendments in form, but that since about 1900 it has been construed to apply to amendments in substance, provided they affect materially, but to an indefinite degree, prior enactments; second, to make a study and comparison of certain cases in order to determine whether the present construction is definite and whether it is possible to apply the clause as now construed consistently; and finally, since the present construction is unsatisfactory, to suggest that a constitutional convention may consider it of sufficient importance to change the provision to apply to amendments in form only. With this introduction the first point will be taken up at once.

Disregard for the moment the opinion of the Supreme Court on this point, and view the construction of these words as a new question. Giving these words their plain interpretation, they would seem to refer only to statutes expressly attempting to revive or amend a prior statute. Revival or amendment by implication would seem not to come within the scope of this provision.

Historically, the purpose of this clause was to correct a specific legislative defect in the enactment of laws.

> "The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison failed to become apprised of the changes made in the law. An amendatory act, which purported only to insert certain words, or to substitute one phrase for another, in an act or section, which was only referred to, but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law and the Constitution wisely prohibited such legislation." People v. Wright, 70 Ill. 388 (1873).

Its application confined within this limited scope, this clause should have furnished no difficulties in interpretation.

The court was first called upon to construe this part of section 13 in the case of People v. Wright. The so-called "Mayor's Bill," approved July 1, 1872, providing that "all members of boards organized under the charter (or amendments thereto) of any city * * * shall be appointed by the mayor," was attacked on the ground that it violated the constitutional provision in that it was in effect an amendment of municipal charters and yet did not comply with the directions of this clause. It might be well to emphasize that the court agreed with the contention that this act was in effect a substantial amendment of existing statutes. "All that can be said of it, in this respect, is that by implication, it amends the municipal charters of cities," (p. 396). The court in Timm v. Harrison, 109 Ill. 593 (1884), at page 600, in commenting on this case, says:

> "The act in effect amended, in many important respects, the existing charters of cities, without purporting in its title to be an amendment, and without setting forth the sections affected or amended in the new act."

Yet notwithstanding this admission that such act was in effect an amendment of prior statutes, the court held that this section of the Constitution did not apply.

> "The language of the Constitution, on which the second objection is based, is: 'No law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act.' No particular section of any act purports to be amended by this act. All that can be said of it, in this respect, is, that by implication, it amends municipal charters of cities. It cannot be held that this clause of the Constitution embraces every enactment which, in any degree, however remotely it may be, affects a prior law on a given subject, for, to so hold, would be to bring about an evil far greater than the one sought to be obviated by this clause. Our views on this question are fully and well expressed by the Supreme Court of Michigan, in People v. Mahoney, 13 Mich. 484. The court there said: 'If, whenever a new statute is passed, it is necessary that all prior statutes modified by it, by implication, should be re-enacted and published at length as modified, then a large portion of the whole code of laws of the state would require to be republished at every session, and parts of it several times over, until, from mere immensity of material, it would be impossible to tell what the law was. If, because an act establishing a police government modifies the powers and duties of sheriffs, constables, water and sewer commissioners, marshals, mayors and justices, and imposes new duties upon the executive and citizen, it has thereby become necessary to re-enact and republish the various laws relating to them as modified, we shall find before the act is completed, that it not only embraces a larger portion of the laws of the state, but also that it has become obnoxious to the other provisions referred to, because embracing a larger number of objects, but not one of which can be covered by its title. This constitutional provision must receive a reasonable construction, with a view to give it effect.' "

The court in each of the following cases (except in English v. City of Danville, where the point was not specifically considered) held that the statute attacked did not violate this section of the Constitution, while at the same time it also expressly or impliedly agreed that the act before it was, in effect, amendatory of existing laws: Timm v. Harrison, 109 Ill. 593 (1884), in which it was contended that sections 1 and 3 of the Dramshop Act of 1883 were additions to the Dramshop Act of 1874 and that the "new act should state at length the law as amended;" School Directors v. School Directors, 135 Ill. 464 (1891), in which it was claimed that the act of 1883 providing for the formation of new school districts was an amendment to the general school law; English v. City of Danville, 150 Ill. 92 (1894), in which the court agreed "that it [the act in question] should be regarded as an amendment to the act of 1887;" and People v. Loeffler, 175 Ill. 585 (1898), in which it was contended that the Civil Service Act was an amendment of numerous sections of the Cities and Villages Act of 1872. On each occasion the opinion of the court was expressed in substantially the language quoted above from People v. Wright.

As will be developed later, the court in its later decisions has devoted much time and space in interpreting this sentence from the opinion of People v. Wright:

> "But an act *complete* in itself, is not within the mischief designed to be remedied by this provision, and cannot be held to be prohibited by it without violating its plain intent."

A careful study of the cases cited above (excepting again English v. City of Danville) will develop the fact that the word "complete" is used in the sense of complete in form and not in the sense of a complete and entire act of legislation on the subject it purports to deal with. Its use is never divorced from a reiteration of the purpose for which this clause of the Constitution was inserted, namely, the prevention of the insertion, striking out or substitution of words in an existing statute.

This statement is substantiated by the following quotation from Timm v. Harrison, 109 Ill. 593 (1884):

> "The mischief intended to be remedied by the Constitution was that of the amendment of statutes by reference to their titles only. Under the practice which had prevailed, to amend a previous act merely by reference to its title, and in the insertion or striking out of certain words, or the making of some substitution therein, the amendatory act of itself, would be unintelligible, and it would require examination and comparison with the prior act, to understand what the real purport of the amendatory act was—hence the constitutional inhibition * * *"

Note that it is said that the amendatory act "would be unintelligible" and "would require examination and comparison with the prior act," not in the sense that it did not constitute "a complete and entire act of legislation on the subject which it purports to deal with," as said in People v. Knopf, 183 Ill. 410 (1900), but because it amended "a previous act merely by reference to its title, and in the insertion or striking out of certain words, or in the making of some substitution therein." It is believed that the court in People v. Loeffler, 175 Ill.

585 (1898), used the words "complete" and "intelligible" in the same sense that they were used in People v. Wright, and Timm v. Harrison, 109 Ill. 593 (1884), since it cites those two cases as authority for the following statement:

> "The mischief intended to be remedied by the provision of the Constitution above quoted is that of amendment of statutes by reference to their title only, when the amendment in many cases cannot be understood without looking into the section amended. But where a new act on a subject is complete in itself and entirely intelligible, showing upon its face just what it is, and where its enactment has no reference to any prior law, it will not contravene any constitutional provision."

Are not "understood," "complete," "entirely intelligible," and "showing upon its face just what it is" so connected up with the reference to the old practice of inserting, striking out and substituting words in existing laws in a blind manner that they are to be interpreted as having reference to form rather than to substance?

The danger of a too extended application of this restriction is recognized in these cases. This statement appears in People v. Wright, and in others of the above noted cases:

> "It cannot be held that this clause of the Constitution embraces every enactment which, in any degree, however remotely it may be, affects the prior law on a given subject, for, to so hold, would bring about an evil far greater than the one sought to be obviated by this clause."

In People v. C. & W. I. R. R. Co., 256 Ill. 388 (1912), the court in considering the constitutionality of "An Act concerning the levy and extension of taxes," in force July 1, 1901, amended by an Act of July 1, 1909, says:

> "The act is a limitation on the powers of various taxing bodies, and although it may have the effect of prohibiting the collection of the whole amount authorized in the charter to be levied if the aggregate exceeds a certain per cent, and in that way operates as a general amendment of all charters, it would lead to absurd results, never intended by the framers of the Constitution, to hold that every section of every charter amended must be inserted at length in the act. It would tax the ingenuity of an expert to accomplish such a feat, and we cannot so construe the constitutional provision."

Again in People v. Van Bever, 248 Ill. 136 (1911), it was argued that sections of the new act, which provided that a court upon conviction of a misdemeanor might, in its discretion, sentence the offender either to jail or to a workhouse, were amendments of various sections of the Criminal Code which provides for punishment upon conviction of a misdemeanor. The court recognized that the new act was amendatory of the Criminal Code in these words, "at the most they only modify them to the extent that it is discretionary with the trial court, instead of committing to jail, to sentence the person to labor in the workhouse or upon the streets and alleys of the city or town," but said:

> "The rule has long been established in this State that this clause of the Constitution was not intended to forbid every enact-

ment which in any degree, however remotely, might affect prior laws on a given subject; that to so hold would bring about a far greater evil than the one sought to be obviated."

It is a fair conclusion, then, that from the time of the adoption of this provision of the Constitution down to 1900, a third of a century, the court uniformly limited the application of this clause to the prohibition of the enactment of statutes incomplete in form.

But beginning with the new century its application was extended. Since that time the court has been called upon to apply it more than twenty times. In eight of these, statutes were held to have violated this provision, nearly all of which, under the limited interpretation given it in the first five cases, would probably have been held to be constitutional.

The case of People v. Knopf is the first one to give this clause a broader construction. This is rather remarkable, too, for these reasons: It was not necessary for the court to extend the application of this provision, for after so doing it held the clause not violated, as it could have been done under the rule of the earlier cases; at the same time it might well have held the clause violated under the rule which it did lay down. In other words, the court went out of its way to lay down a new and difficult rule and then refused to apply it. But the harm was done, and a rule was formulated which the court has not been able to follow consistently. These are the words which are objected to:

> "If it can be held to be such a law, constituting a complete and entire act of legislation on the subject which it purports to deal with, it will be deemed good and not subject to the constitutional prohibition; notwithstanding it may repeal by implication, or modify the provisions of prior existing laws."

This is an entirely new conception of the words of the Constitution, and it does not seem to coincide with either their plain meaning or the construction first given them. Here for the first time is injected the element of completeness as to substance—"a complete and entire act of legislation on the subject which it purports to deal with." Neither the words of the provision nor the purpose of it would seem to form a foundation on which such a construction might rest.

As said above the result reached in People v. Knopf might have been reached by applying the rule of People v. Wright. Notwithstanding the recognition of the character of the statute attacked—"The mere fact that portions of the old law are left in force, so that the statutes present the aspect of what has been called patch-work legislation as they undeniably do * * * It is apparent that it would be impossible to determine what the law is relating to what property is subject to assessment and taxation and what is exempted, and other branches of the general subject as to which the old law remains in force, without reference to such old law"—the court holds this clause of the Constitution not violated. The difficulties of the application of the broader rule are met in the opinion which originated it and are not overcome, but are left as stumbling blocks to hinder the court on every subsequent occasion on which it is called upon to decide the constitutionality of a statute under this provision.

People v. Knopf is the case which makes the transition from the original construction to the later construction. It does, we think, lay down the new rule; it does not go the full length by also applying the new rule. This final step is taken by later cases. People v. Election Commissioners, 221 Ill. 9 (1906), definitely applies the later construction of this provision and holds invalid an amendment in substance. The following appears at page 20:

> "Section 13 of article 4 of the Constitution provides that no law shall be amended by reference to its title only, but the section amended shall be inserted at length in the new act. Section 2 of this act provides that nothing contained in it shall be construed to prevent nomination of candidates by petition by any party as defined in the act, pursuant to the provisions of sections 4, 5 and 6 of an act entitled, 'An act to provide for the printing and distribution of ballots at public expense, and for the nomination of candidates for public office, to regulate the manner of holding elections and to enforce the secrecy of the ballot,' provided the petition shall be filed on or before noon of the day previous to the day of the primary election. A subsequent act may have the practical effect of amending a prior one, or it may be substituted for it without violating the Constitution, but this act is a direct violation of it. The Ballot Law provides for nomination by petition signed by a certain number of qualified voters or certain percentages of such voters, and the petition is to be filed a certain period of time before the election to office. This act changes the time for filing the petition and confines the right to certain political parties and attempts to amend the act by reference to its title only. Section 2 is void for that reason."

Note that the act which was held to violate this provision was a new and apparently independent enactment. Nowhere on its face does it purport to amend any prior statute. If an amendment at all within our two definitions, it must be an amendment in substance. This decision is, therefore, an unequivocal declaration that this clause does apply to amendments in substance.

It will be remembered that the first object of this paper was to show that the construction first given this provision limited its application to amendments in form, but that in recent years this construction has been broadened sufficiently to apply to amendments in substance as well. The foregoing discussion tends to support these statements.

A comparison of certain later cases to discover the limits of the present construction forms the second part of this discussion. Is this later rule definite and can it be applied consistently?

The cases following People v. Knopf down to 1917 are in irreconcilable conflict. The court was presented with this problem in People v. Crossley, 261 Ill. 78 (1913), and attempted to harmonize them by evolving these three rules:

> "(1) An act which is complete within itself and does not purport either in its title or in the body thereof, to amend or revive any other act, is valid even though it may by implication modify or repeal existing statutes."

"(2) An act, though otherwise complete within itself, which purports to amend or revive a prior statute by reference to its title only, and does not set out at length the statute amended or revived, is invalid, regardless of all other questions."

"(3) An act which is incomplete in itself and in which new provisions are commingled with old ones so that it is necessary to read the two acts together in order to determine what the law is, is an amendatory act and invalid under the Constitution, and it is unimportant in such cases that the act does not purport to amend or revive another statute."

Rule 2 can be left out of consideration because it is unimportant.

What is left? In substance a positive and negative statement of the same rule—the rule of People v. Knopf re-stated. It does not bring order out of chaos, solves no difficulties, and lays down no clear principles to guide the court in later cases. Such a result was to be expected. As long as the court continues to hold that this constitutional provision applies to amendments in substance as well as to amendments in form it will be impossible to apply the provision consistently.

A comparison of a few cases is given to show the confusion into which the law has been thrown since the opinion in People v. Knopf was written. In People v. School Directors, 267 Ill. 172 (1915), the court was called upon to decide the constitutionality of an act which provided "That graduates of the eighth grade residing in a school district in which no public high school is maintained, shall be admitted upon payment of tuition, to any public high school, with the consent of the school board of the district in which such high school is situated." It was held that it was not in violation of the Constitution as being amendatory of section 121 of the general School Law which provides that pupils may be transferred from one school district to another and for payment of tuition. In Board of Education v. Haworth, 274 Ill. 538 (1916), section 5 of the Act of 1915, which it was contended was unconstitutional, provided for the payment out of the State school fund, by the county superintendent, of tuition of pupils attending high schools outside their districts. Section 14 of the School Law provides that "the county superintendent of schools shall apportion the same [amount due county from State school funds] to townships * * * according to the number of persons under twenty-one years of age * * * and shall pay the distributive share * * * to the township treasurer * * *" It was held that section 5 of the Act of 1915 was unconstitutional because it was in effect an amendment of section 14 of the School Law and was not in the form prescribed by section 13 Article IV of the Constitution. The relation of the amendatory acts in both cases to the general School Law is so analogous that, whatever the rule applied, the result should have been the same in both cases. Under the doctrine which People v. Wright stands for the result undoubtedly would have been the same: both amendatory acts would have been sustained.

For further illustration, compare the two cases of People v. Knopf and People v. Stevenson, 272 Ill. 325 (1916). In the first case, by the Assessment Act of 1898 a board of assessors was created and it was given the power to assess property, a power previously lodged in the

township assessor by the general Revenue Law. This law was held constitutional. In the second case, an Act of June 13, 1915 permitting the incorporation of a company for the purpose of carrying on a real estate agency business was held unconstitutional because amendatory of section 1 of the general Incorporation Act which provides that companies for the carrying on of a real estate brokerage business could not be incorporated, and of section 5 of the same act which limits real estate holdings and mortgaging by corporations. The two cases are substantially alike. The efficacy of the new act in the first case depended upon various sections of the Revenue Law which, to use the words of the court in People v. Knopf, page 417, determined "what the law is relating to what property is subject to assessment and taxation and what is exempted, and other branches of the general subject." In the second case real estate agencies might have been incorporated within the same limitations and with the same powers as other corporations under the general Incorporation Act. What has been said in connection with the comparison of People v. School Directors, 267 Ill. 172 (1915) with Board of Education v. Haworth 274 Ill. 538 (1916), may likewise be said of these two cases.

It was stated at the outset that this provision admitted of two constructions, the second of which was that it applied to amendments in substance. It was also said that obviously it could not be held to apply to all amendments in substance. The line has to be drawn somewhere. Just where is a matter of judgment. But decidedly the worst feature of this construction is that a general rule as to where the line shall be drawn cannot be laid down. In the end, each case rests on its own particular facts, and whether or not this clause applies is a matter which rests in the judgment of the Supreme Court. That no one can guess beforehand what that decision will be in a given case is clearly brought out by the comparisons given above.

But before passing to our final point, we will digress a little to present a short discussion of some collateral issues. Remember that we are here dealing with a clause of the Constitution which says that amendments of a law shall comply with certain requirements. We are endeavoring to discover whether this prohibition should apply to express amendments only or to amendments in substance as well. There is a similar prohibition in section 2 of Article XIV:

> "The General Assembly shall have no power to propose amendments to more than one article of this Constitution at the same session."

Does this prohibit more than one express amendment or does it apply to amendments in substance as well? Both sections limit amendments, one of statutes, the other of the Constitution; the analogy between the two questions is, therefore, so close that a decision that section 2 of Article XIV applies only to express amendments would seem to be strong authority that section 13 of Article IV should apply only to express amendments. We have such a decision in the case of City of Chicago v. Reeves, 220 Ill. 274 (1906). It was there expressly held that section 2 of Article XIV applies only to express amendments.

But this case is of more than usual interest for another point. This is because it incidentally construes the provision of the Constitution under discussion in this article. This case was decided in April, 1906, the same year in which People v. Election Commissioners, 221 Ill. 9 and Badenoch v. City of Chicago, 222 Ill. 71 were decided, both holding that this provision applied to amendments in substance, and after the basis for the broader rule had been laid down in People v. Knopf. Yet the court in City of Chicago v. Reeves, 220 Ill. 274 (1906), clearly indicates that in its opinion the provision was intended to have no such effect.

> "In amendments of statutes and Constitutions a distinction between express amendments and amendments by implication has been repeatedly recognized by courts, and such distinction is well understood. By section 13, Article IV it is provided that 'no law shall be revived or amended by reference to its title only, but the law revived, or section amended, shall be inserted at length in the new act.' Subsequent to the adoption of this Constitution it was contended, in a number of cases, that this provision embraced enactments which amended prior laws by implication. That view, however, was not adopted by the court. In People v. Wright, 70 Ill. 388, on page 396, the court in construing the above constitutional provision, said: 'No particular section of any act purports to be amended by this act. All that can be said of it in this respect is, that, by implication, it amends the municipal charters of cities. It cannot be held that this clause of the Constitution embraces every enactment which, in any degree, however remotely it may be, affects the prior law on a given subject, for to so hold would be to bring about an evil far greater than the one sought to be obviated by this clause.' To the same effect are Timm v. Harrison, 109 Ill. 593; School Directors v. School Directors, 135 Id. 464; People v. Loeffler, 175 Id. 585; People v. Knopf, 183 Id. 410."

And then follows the long quotation from People v. Mahoney, 13 Mich. 481, given above in the quotation from People v. Wright. Then, too, the case of City of Chicago v. Reeves 220 Ill. 274 (1906) is interesting for a third point. If those cases which sustain the constitutionality of amendments in substance of existing laws are authority for the rule that amendments of the Constitution by implication are not prohibited, conversely, those cases which sustain the constitutionality of amendments by implication of the Constitution are authority for the rule that amendments in substance of statutes are not prohibited.

Consider another class of cases which may be of some help. It may logically be said that a partial repeal by implication is no more than an amendment by striking out certain parts of an existing law. Assuming this to be true, the same rule should apply to partial repeals by implication that applies to amendments in substance. Yet, so far as it is possible to discover, it has always been held by the courts of this State that partial repeals by implication are not prohibited by this provision of the Constitution. Geiser v. Heiderich, 104 Ill. 537, (Acts of 1861 and 1874 enlarging rights of married women by implication repealed certain portions of limitation laws); Perry v. Bozarth, 198 Ill. 328,

(amendment in 1879 of section 88 of Practice Act by implication repealed portions of section 90 of Act of 1877); Lang v. Friesenecker, 213 Ill. 598, (amendment of 1895 to section 9 of Act of 1874 operates as repeal, *pro tanto*, of sections 1 and 18 of Administration Act); Galpin v. City of Chicago, 269 Ill. 27 (dictum). Then, if the assumptions above are correct, these cases ought to be authority for the proposition that the provision does not prohibit amendments in substance. To the statement that repeals by implication are not in violation of the Constitution the last two cases above cite cases on repeal by implication and cases on amendment in substance without distinction. This shows a tendency on the part of the court to regard the two questions as parts of a larger question. Moreover, if cases holding amendments in substance valid are authority that repeals by implication are valid, then, conversely, cases holding repeals by implication valid are authority that amendments in substance do not violate the Constitution.

A troublesome legislative problem should be stated because of the constantly recurring difficulty presented by this constitutional provision in the enactment of revenue laws. The Act concerning the levy and extension of taxes, popularly called the "Juul Law," in force July 1, 1901, as amended in 1905, 1909, 1913 and 1915, provides "that in determining the amount of the maximum tax authorized to be levied by any statute of this State" certain regulations shall be followed. In People v. Day, 277 Ill. 543 (1917), the constitutionality of two pension fund acts was considered. They provided generally that the City of Chicago might levy a tax for police and firemen's pension funds to be collected in like manner with the general taxes, but declared specifically that in reducing the tax levies the tax should not be taken into account or considered as a part of the general tax levy and should not be included in the three per cent limitation of assessed valuation. Both acts were upheld. The basis of the decision was that the "act did not amend the statute or affect it in any way but provided for a new and additional tax which should not be within the terms of the Tax Reduction Act." By the terms of the Juul Law, all laws on the subject at the time of the passage of the act, at least, and presumably all laws to be passed in the future, are affected by the provisions of the act; by the decision of this case new laws providing that the provisions of this act shall not apply may be passed and will not be amendatory of this act. Would an amendment, containing a provision like that in the statutes considered in People v. Day, to a law in force at the time of the passage of the Tax Reduction Act be classed as a new act so far as its character as an amendatory act to the Tax Reduction Act is concerned? Or suppose an old law were repealed and then later revived with a like proviso; would it be within the rule of this case or not?

We have already stated that only such acts as are sufficiently amendatory in substance have been held to be within the prohibition of this provision. To what degree they must amend prior acts we cannot say. On the one hand, it is easy to imagine an act which substantially amends in substance a prior act; and on the other, an act which only immaterially amends in substance an existing law. But between these extremes, there are many degrees, graduating from the

most immaterial amendment to the most substantial. If we are not to apply this constitutional provision to every amendment in substance the only logical place to stop short is at the line between some two of these degrees. And yet it is impossible to state the rule more specifically than to say that only those acts which substantially and materially affect a prior act should be held within the application of this provision. It would seem that the fact that the new act affects materially two or more prior acts ought none the less bring it within the application of the provision. Yet it may be stated as a general rule that the court, when presented with the argument that the act attacked amends a number of prior enactments, has uniformly refused to hold it within the application of this provision. Such was the case in the contest of the "Juul Law" which was attacked as amending the powers of various taxing bodies. People v. C. & W. I. R. R. Co., 256 Ill. 388 (1912). See also People v. Van Bever, 248 Ill. 136 (1911), in which it was contended that a certain act amended all the sections of the Criminal Code providing for the punishment of misdemeanors. It will have to be admitted that the court in this line of cases stated that the act contested did not materially affect the prior acts and was complete in itself. Yet it is impossible to see wherein this statement was more true of these acts than of a number of acts affecting only one prior enactment which the court did hold unconstitutional. Apparently, when the court was presented with the possibility of forcing the Legislature to amend a series of prior acts, it refused to carry the application of its rule that far, though there was no logical ground for stopping short.

To review briefly, we found that the early construction of this clause limited its application to amendments in form, and that the later construction extended its application to certain amendments in substance. That it is almost impossible to apply this provision as now construed consistently has been brought out by our comparison of cases.

The third part of this discussion—that a constitutional convention may consider it advisable to change the provision so as to apply to amendments in form only—forms our conclusion. Our statute law now covers a broad field and numerous subjects. Many new laws may more or less incidentally affect subjects which have already been legislated upon. Immediately upon the introduction of such a bill into the General Assembly uncertainty surrounds it because of the doubtfulness of its constitutionality under the present rule; the members can have no definite opinion as to its constitutionality. After passage its validity is still questionable. Not until the Supreme Court has decided the question is that uncertainty removed.

It is not within the scope of this discussion to treat at length a justification of the present construction of this provision. Considerable can be said in favor of it, however. For instance take our law in relation to practice. Many of the regulations concerning practice are collected in this one act. It is self-evident that it is better in every respect to have them thus put into one unified act. The repealing section of this law (Hurd's Rev. St. (1917) Chap. 110, sec. 127) shows that the statute replaced some twenty or twenty-five old acts. The rule that certain amendments in substance must comply with the requirement of the constitutional provision will have the partial effect

of keeping the regulations as to practice together. It will be less likely that independent acts, which in substance amend the Practice Act, will be passed, thereby again scattering the rules as to practice among twenty or twenty-five acts.

This point can be well illustrated by the following quotation:

> "In the act under consideration the attachment and garnishment of the salaries and wages of officers and employees of certain municipal corporations are the subjects dealt with, and while the title of the act purports to be the title of a complete act, it appears from the body of the act that it is not a complete act within itself, but that the act is by itself, and when considered alone, wholly ineffective and inoperative, and that its provisions cannot be made effective and operative except by engrafting the new act upon the attachment and garnishment acts heretofore in force in this State. In the new act no provision is made for reducing the garnisheeing creditor's claim to judgment, or for exhausting his remedy against his debtor's tangible property by issuing an execution and having it returned no property found before a garnishment proceeding is commenced, nor is there any method pointed out in the new act for setting the garnishment proceeding in operation by the filing of an affidavit that the garnisheeing creditor has reduced his claim to judgment, that the personal property of his debtor has been exhausted, and that the municipality or officer sought to be garnisheed is indebted to the officer or employee against whom he has judgment. All the provisions regulating these matters must be found in the general statutes upon the subject of garnishment, and in the new act the grounds for attachment are not stated, and the affidavit and bond, which are prerequisites to the issuing of a writ of attachment, are not found, but these matters must also be sought in the general statutes of the State regulating the issuing of writs of attachment. It thus appears that the act of 1905 is not a complete act within itself, and that it amounts to nothing more than an attempt to change the existing statutes of the State upon the subject of attachment and garnishment, so as to make them broad enough to include within their terms the attachment and garnishment of the salaries and wages of the officers and employees of the municipal corporations named in the new act by intermingling the provisions of the new act with those of the old statutes upon those subjects, the effect of which clearly is to bring the new statute within the view expressed in the Knopf case, and to render it unconstitutional and void, as amounting to amendments of the general statutes upon the subjects of attachment and garnishment heretofore in force in this State." Badenoch v. City of Chicago, 222 Ill. 71 (1906.)

But it is only meant to suggest that there is this good point in favor of the present construction—it will have a slight tendency to keep legislation on an integral subject within one statute. But this rather weak justification must be weighed against the difficulties and inconveniences of the present construction. To repeat, our statute law covers a very broad field. Most new legislation is in addition to

and concerning subjects already legislated upon. In other words, most new legislation is in a sense more or less amendatory in substance of acts already passed. If more or less amendatory in substance, it must be overshadowed by a cloud of doubt cast by the present construction of this constitutional provision. May it not be desirable to try to keep legislation on a single subject within one statute by some other method, and abolish this construction which leads to so much doubt and confusion?

It only remains to suggest the question which it is the purpose of this article to raise—is it desirable to retain this provision with its present construction, or to adopt in its place such language as would apply to amendments in form only?

COOK COUNTY REPRESENTATION.

A subject that is almost certain to present itself to a convention is that of limiting the representation of Cook County. This county has in the past grown more rapidly in population than has the remainder of the State. The present Constitution prescribes what is substantially a rate of representation in proportion to population for the division of the State into senatorial districts. Under the present plan, also, the senatorial district is the basis for electing members of the House of Representatives, three members of the lower house being chosen under the cumulative voting plan from each senatorial district.

Under the senatorial apportionment made in 1872, Cook County had seven out of fifty-one senators, and, of course, twenty-one out of one hundred and fifty-three representatives. Under the apportionment made in 1901 and still in force, Cook County has nineteen out of fifty-one senators, and fifty-seven out of one hundred and fifty-three representatives. The General Assembly made no re-apportionment upon the basis of the census of 1910, but under that census the present constitutional rule would give Cook County twenty-one senators out of fifty-one, and sixty-three representatives out of one hundred and fifty-three. In 1910 Cook County had more than forty-two per cent of the population of the State, and at the present proportion of increase would soon have a larger population than all the other counties combined. Under the present constitutional rule, this would mean that one county may soon have a majority of the members in both houses of the General Assembly.

Under present conditions, it is often asserted that Cook County and Chicago are dominated by the representatives of the rest of the State in the General Assembly. This statement has less basis than is usually assumed, for legislation to meet the local needs of Chicago and Cook County is infrequently defeated if the senators and representatives of Cook County are definitely and unitedly for it. Yet, of course, it is out of the question to have complete unity among the legislative members from Chicago and Cook County.

On the other hand, much is heard, outside of Chicago, of the fear of dominance of the State by Cook County because of the growth of that county in population. This fear was partially responsible, at least, for the fact that there was no senatorial apportionment under the census of 1910, and that Cook County since that year, has not had in the two houses the representation to which it is entitled under the present Constitution.

The problem so presented is not one that can be evaded either by Cook County or by the rest of the State. The dominant control of the

government of the State by one city or one county is clearly not to be desired, either in the interest of that city or county or of the State. On the other hand, it is no more desirable that the purely local affairs of Chicago and Cook County should be controlled by the rest of the State. The determination as to what shall be done in this matter is, of course, for a convention, but it may be well to present several suggestions that have been made for dealing with the problem.

First of all, attention should be called to the fact that a limitation, in fact, of Cook County representation in both houses is now in existence. The Constitution commands a senatorial re-apportionment after each decennial census. However, there is no compulsion upon the General Assembly to make such a re-apportionment. Failure to re-apportion under the census of 1910 means that Cook County has two less senators and six less representatives than it should have under the constitutional rule. A failure to re-apportion under the census of 1920 would probably result in an even more glaring violation of the present constitutional rule. Merely by legislative inaction, Cook County is becoming limited in legislative representation to a greater extent than is likely to be the case under any new constitutional provision. Moreover, such a makeshift binds upon the rest of the State an antiquated apportionment which is highly unequal. To cite a specific instance outside of Cook County, the twelfth senatorial district under the census of 1910 had 77,513 inhabitants; the fiftieth senatorial district had 131,288.

The following suggestions have been made to meet the problem here presented:

(1) That Cook County's representation in one house should be limited, leaving the representation in the other house to be based purely upon population. For example, Cook County under the census of 1910 would be entitled to twenty-one senators. The Constitution might expressly limit Cook County for the future to twenty-one out of fifty-one senators, and provide a purely population basis for the other house, so that the county might, if its population continued to grow more rapidly than that of the rest of the State, obtain a majority in the lower house at some future time. The two houses being necessary to enact any law, the advocates of this plan assume that under it the city could not be dominated by the rest of the State nor the rest of the State dominated by the city. The scheme here outlined would, of course, require a departure from the present constitutional rule under which senatorial districts serve also as areas for the election of representatives. However, it would not need to interfere with the plan of cumulative voting and minority representation.

In some states, as in Rhode Island and Connecticut particularly, large cities are so under-represented in one or both houses of the legislature, that the situation practically becomes one in which rural areas dominate the city. In Delaware and Maryland the same condition exists. Baltimore, with nearly half the population of Maryland, has but twenty-four out of one hundred and two members of the lower house, and but four out of the twenty-seven members of the Senate. In Pennsylvania there is a constitutional rule that "no city or county shall be entitled to separate representation exceeding one-sixth of the

whole number of senators." This rule limits the representation of Philadelphia in the Senate although that city has about one-fifth of the population of the state.

New York is the state most nearly comparable with Illinois, in the matter here under discussion, and New York's policy as to limited representation is usually in the minds of those suggesting a similar plan for Illinois. For the lower house representation is approximately upon the basis of population. A similar basis is adopted for the Senate, with the limitation that "no county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators." New York City is not entirely within one county.

(2) A plan of limiting the representation of Chicago and Cook County in one of the two houses, may safeguard the rest of the State from majority control from Cook County and may safeguard Chicago from domination by the rest of the State. Negatively it may accomplish the object sought to be attained. The city, however, already has a negative over State legislation relating specifically to the government of Chicago, through the provision of the constitutional amendment of 1904, that such legislation shall not come into force until approved by popular vote within the City of Chicago. New York City has a like negative control through a limited power of veto over legislative acts affecting the city.

It is urged, however, that what the City of Chicago needs is not so much freedom from State dominance, but power to work out independently its own local problems. If Cook County and Chicago have a limited representation, but continue under the necessity of getting authority from the Legislature to deal with every new aspect of a purely local problem, they are helpless, for legislative inaction denies them the things they may need. It is for this reason that the grant to Chicago of power to handle its local problems, freed from the necessity of legislative action in each case, is coupled with the issue of reduced representation. If Chicago is governed largely from Springfield, reducing the representation of Chicago at Springfield is reducing the power of the city to govern itself. To avoid this situation, if Chicago's share at Springfield is to be reduced, it may logically be urged that Chicago's share in managing her own local affairs should be increased so that she may not be dependent upon Springfield in the solution of her local problems.

Of course, the problem of municipal home rule is much broader than that merely of Chicago. Municipal home rule may be needed for other cities of the State, and may be desirable also in order that the Legislature may relieve itself of problems that are properly local to the cities. However, as yet it is only as to the largest city of the State that the problem of municipal home rule bears a close relation to that of reduced representation. One aspect of this relationship was presented by Nathan William MacChesney in an address before the Illinois State Bar Association in 1917. Mr. MacChesney said: "It is entirely probable that in return for home rule in Chicago, that the people down State will demand a restriction upon the representation of Cook County.

of 1904 abandoned the plan of subjecting all cities to a uniform type of State legislation. For Chicago, action by the State Legislature is the first step in legislation, but the city itself finally determines whether there shall be legislative regulation. A general plan of municipal home rule merely extends the principle already so recognized. Chicago has, however, only one of the elements of home rule, for if new powers are needed by the city, the first and essential step toward obtaining such powers is affirmative action by the Legislature, and of course the city is in this matter completely helpless in the face of legislative inaction.

In another manner also, has the present plan of uniform legislation for cities in Illinois attained some degree of flexibility. Local and special legislation for cities is forbidden. But if the General Assembly enacts a law which is by its terms to come into effect in such cities as may by popular vote adopt its provisions, this is not constitutionally objectionable as special legislation. The Commission Government Act of 1910 is an act of this character. Cities in this State which have not retained special charters enacted before the Constitution of 1870, now have the option of remaining subject to the terms of the Cities and Villages Act of 1872, or of adopting by popular vote the Commission Government Act. To this extent they have home rule as to their form of government, and if an act permitting the city manager plan be adopted, cities would have still a third choice as to their form of local government. If it were not for a large body of local option laws in this State, cities would be very unduly hampered in meeting their local needs.

Cities in this State are almost entirely free from detailed legislative interference, and have some liberty to determine their governmental organization. The principle of municipal home rule, as here dealt with, would leave them free from legislative control over their local affairs and would grant them much greater liberty in determining their form of local government and in solving their purely local problems.

A very broad degree of "municipal home rule" has been granted by constitutional provisions in the twelve states of Missouri, California, Washington, Minnesota, Colorado, Oregon, Oklahoma, Michigan, Arizona, Ohio, Texas and Nebraska. The constitutional and legal provisions vary a great deal in these several states.[1] Their one common characteristic, however, is the provision that cities may frame their own charters, and thus determine their form of government and their manner of handling purely local problems, freed from the necessity of resorting to the Legislature every time a slight change in organization or powers is desired. Of course, in the working of this plan, the most difficult problem is that of determining what are local matters which should be left entirely within the control of the cities, and what matters should remain within the power of the Legislature. The states that have adopted the plan of permitting cities to frame their own charters, have however, met this problem with some degree of satisfaction.

The problem of municipal home rule, as here discussed, is a problem, not merely of Chicago, but of the other cities of the State as well. Rock Island, Moline and other cities feel the need for biennial relief through legislative action. Chicago's difficulties have, in part, been met by the constitutional amendment of 1904. The lack of flexibility

[1] See McBain, H. L. The Law and Practice of Municipal Home Rule. (New York, 1916).

with reference to cities other than Chicago has been partly met by the option offered to them of adopting the commission form of government. But in this State, as contrasted with those mentioned above, cities have little control over their own affairs, and it will be for a convention to decide (if one is assembled) whether the plan of municipal home rule should be adopted.

While Chicago presents certain problems that are shared with other cities of the State, a convention must necessarily give special consideration to the most populous city and county. Detailed provisions now appear in the Constitution regarding the government and the courts of Cook County, and some of these provisions have naturally ceased to be desirable. The only constitutional provisions with respect to Chicago are those in the constitutional amendment of 1904 permitting special legislation for that city. Should it be desired to reorganize either the government or the judicial system of Cook County or to bring about a consolidation of functions of city and county, constitutional change would be necessary.

Not only in Chicago and Cook County, but throughout the rest of the State as well, there are a number of taxing bodies, each performing some special function and levying taxes for that purpose, each such body being independent of other local governing bodies in the performance of its functions. This situation has been largely brought about by the unexpected operation of a provision which forbids any municipal corporation becoming indebted "in the aggregate exceeding five per centum on the value of the taxable property therein." Take the building of the Chicago drainage canal as an illustration. The City of Chicago desires to have the canal constructed. Money must be borrowed for the purpose and the city as a municipal corporation is already indebted to the constitutional limit. The thing done, therefore, is to create a new municipal corporation (The Sanitary District), including the City of Chicago but other territory as well; and this new municipal corporation starts out with a new and unused debt limit. The debt limit is, therefore, not what it might seem to be, merely from a reading of the Constitution, and this fact must be taken into consideration in any plan for the reorganization of local government in the State.

COUNTY AND TOWNSHIP GOVERNMENT.

The Constitution specifies two types of county government, that under the township system and that under a board of county commissioners. County officers are specified in detail, and the Cook County government is determined. Cook County has no alternative as to its form of government, and among the other counties eighty-five have adopted the township system. In county as well as in city government, some flexibility in the details of organization is accomplished by so-called local option laws, and by the fact that for certain purposes of legislation the Constitution expressly permits classification of counties.

The purpose here is merely to point out problems which may present themselves to a convention, and for this purpose it will be sufficient to quote a statement from the report of the joint legislative committee appointed by the Forty-seventh General Assembly to consider legislation relating to county and township organization and to roads, highways and bridges. After a general statement regarding the problems of local government this committee said:

"This general survey of town and county government in Illinois confirms the results of other investigations in particular fields that the present decentralized and unorganized administrative machinery produces inefficiency and waste in the transaction of public business. Originating in a vague theory of local self-government at a time when, under frontier conditions, public business amounted to little, it has proved entirely inadequate to the complex social and industrial problems of today. The existing arrangements do not secure home rule for local communities in local affairs; but form a heterogeneous congeries of officials, lacking anything like systematic correlation to each other, and without effective responsibility either to the local communities or to the State, which vainly attempts to regulate their activities by an excessive degree of legislative centralization. To meet the conditions of today, there is need for more systematic organization, and for a larger use of experts trained in special fields than can be secured by the smaller units of local government.

"Where improvements have come in recent years, it has been by such means—as in the organization and supervision of local school administration, and in the more complete centralization of the greater part of public charity by the development of specialized State institutions. So too, the movement for municipal home rule gains headway because the cities are securing a more systematic municipal organization, and deal with public affairs on a scale large enough to utilize the services of trained experts.

"References are made throughout this report to numerous proposals for changes in the organization of local administration in various areas and branches of the public service. Many of these have been previously urged by students of special phases of the subject. May not the time be at hand when more rapid progress will be gained by taking a larger outlook and planning comprehensive changes along similar lines in the whole field of local government?

"For any general and thorough reorganization of local government changes will be required in several articles of the State Constitution. In the article on counties, the provisions designating and requiring the election of county officers and the annual election of county commissioners and annual township meetings should be eliminated. In the article on the judiciary, detailed provisions in regard to courts and the election of justices of the peace should be eliminated or made more flexible. The article on revenue should be amended to permit of changes in the present methods of taxation, and the limitations on tax rates and debt should be revised.

"Such changes cannot be hoped for by the process of proposing separate constitutional amendments, which is more difficult in Illinois than in any other state; and to carry out a thorough reorganization of local government will require a constitutional convention to undertake a general revision of the State Constitution." [1]

[1] Report of the Joint Legislative Committee of the Forty-seventh General Assembly appointed to take up the matter of making a general revision of the laws pertaining to county and township organization and those relating to roads, highways and bridges, Vol. II, pp. 20-21 (Springfield, 1913).

WORK OF A CONVENTION IN MAKING A DETAILED EXAMINATION OF EXISTING CONSTITUTIONAL PROVISIONS.

Where a Constitution is brief and contains only matters of fundamental and permanent character, a complete re-examination of its provisions at frequent intervals is, of course, unnecessary. Changes through the proposal of specific amendments suffice to meet new problems which may have arisen since the document was first adopted. These statements apply to the Constitution of the United States, which was framed in 1787, and to the Constitution of Massachusetts, which was adopted in 1780.

State Constitutions, however, have tended to contain more and more of detail, and such detail may require pretty extensive re-examination at somewhat frequent intervals. The fundamental matters may require little or no change, and it may be desired that the general organization of government remain substantially unchanged, yet numerous specific alterations in detail may be thought necessary. It has already been suggested that each succeeding Illinois Constitution has contained more of detail than its predecessor, and the Constitution of 1870 is a lengthy and elaborate document. It does not, in fact, limit itself to fundamentals, which should and do remain the same from generation to generation.

To be specific regarding the Illinois Constitution of 1870, the judicial organization of Cook County cannot be regarded as a matter of fundamental and unchanging principle. Clearly, such an organization, which was devised in some detail for a county of 350,000, may require re-examination when the county comes to have two and a half million inhabitants. And the same may well be true of detailed provisions relating to numerous other matters.

Of changes in the courts, for example, that involve no fundamental alteration of the Constitution, the following have been suggested: (1) that the terms of county judges should be extended to six years, and that the county courts should be given equitable jurisdiction;[1] (2) that probate courts should be given jurisdiction over testamentary trusts;[2] (3) that the circuit court of Cook County should be relieved of the constitutional duty of determining the number of deputies and assistants in the several county fee offices of Cook County;[3] (4) some degree of reorganization at least of the courts of Cook County;[4] (5) the election of judges of the appellate courts rather than the selection

[1] Proceedings of the Illinois State Bar Association, 1917, pp. 325-27.
[2] Proceedings of the Illinois State Bar Association, 1917, p. 333; see Frackleton v. Masters, 249 Ill. 30 (1911).
[3] Proceedings of the Illinois State Bar Association, 1917, p. 349.
[4] Proceedings of the Illinois State Bar Association, 1917, pp. 336, 348.

of such judges from among judges of the circuit courts.[5] All of these suggestions have been made by judges now in service, upon the basis of their experience under the present Constitution. Other suggestions that have been made with respect to the courts have to do with the reduction of the size of the jury in civil cases[6] and to the alteration of the present plan of choosing the clerk of the Supreme Court.

Under the present Constitution, the General Assembly apparently has the option of abolishing the grand jury or of continuing it as it existed at common law. There is some sentiment in favor of changing the composition of the grand jury if it is to be preserved, and such a change would require an alteration of the Constitution.[7]

With respect to the most fundamental problem of taxation a full discussion appears earlier in this bulletin. In addition to this, details are now specified in the Constitution with respect to a tax system, and a re-examination of such details may well be desirable. Of detailed tax provisions that have made some trouble, the following may be mentioned: (1) The Constitution of 1870 originally limited the power to make special assessments to cities, villages and towns. When it was desired to permit drainage districts to levy such special assessments, a constitutional amendment was necessary, and such an amendment was adopted in 1878. The Supreme Court has so interpreted the Constitution in this respect as to include parks[8] but it would require constitutional change to permit special assessments by municipal corporations other than cities, villages, towns, park districts and drainage districts; (2) Bodies empowered to levy special assessments may do so only "to make local improvements." The Supreme Court has held that the term "local improvements" means an improvement under the control of one municipality, and forbids the use of special assessments for an improvement undertaken by two municipalities jointly.[9] It may be desirable to permit the more extended use of special assessments by co-terminous municipal corporations which may often be able to plan local improvements more efficiently as a joint enterprise. (3) Under the Constitution, local improvements may be made by "special assessment or by special taxation of contiguous property or otherwise." This has been held not to permit a combination of special assessments and special taxation in order to defray the expense of a local improvement.[10] Whether such a combination is desirable or not is beyond the scope of this discussion, but the question may properly present itself to a constitutional convention. (4) The Constitution contains detailed provisions regarding tax sales and the right of redemption from such sales. This apparently prevents legislation eliminating the so-called professional tax buyer, and forbids the adoption of any plan by which the taxing body may alone purchase land upon which taxes are delinquent, without a sale open to competitive bid.[11] In this matter, a constitutional convention would be faced

[5] Proceedings of the Illinois State Bar Association, 1917, p. 358.
[6] Proceedings of the Illinois State Bar Association, 1917, p. 427.
[7] Proceedings of the Illinois State Bar Association, 1917, pages 426-27.
[8] VanNada v. Goedde, 263 Ill. 105 (1914).
[9] Loeffler v. City of Chicago, 246 Ill. 43 (1910).
[10] Kuehner v. City of Freeport, 143 Ill. 92 (1892)
[11] Governor's Veto Messages, Fiftieth General Assembly, 1917, pp. 34.

with the question whether it should preserve the present method of tax sales, which undeniably presents some evils.

With respect to appropriation methods, several constitutional problems are presented: (1) The Constitution provides that "bills making appropriations for the pay of members and officers of the General Assembly, and for the salaries of the officers of the government, shall contain no provision on any other subject." In applying this provision, two difficulties present themselves. *First*, What is an officer as distinct from an employee? The court has not been able to give to this question an answer definite enough to furnish a safe guide to the Legislature. *Second*, The thing which is sought by this provision seems to be primarily the prevention of "riders" to appropriation bills. However, under the Constitution of this State, an appropriation may be combined with other legislation provided the appropriation is not one for officers. It does not accomplish the desirable purpose of preventing all "riders" to appropriation bills, and has the undesirable effect of appropriating money in such a manner that the layman cannot easily discover the actual amount available for a particular office. Under this constitutional provision, the General Assembly in appropriating for an activity of the State government, must appropriate in one act for the *officers* engaged in such activity, and in a separate act for the employees and other expenses of the activity. Citizens interested in knowing the total expenses of such an activity, must resort to the two enactments. (2) The Constitution also specifies that "each General Assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session." A regular session of the General Assembly has in practice come to adjourn in June, and under another provision of the Constitution acts come into effect July 1. Does the Constitution compel the making of appropriations to cover the whole period from July 1, 1917 to September 30, 1919? New appropriations will come into operation July 1, 1919, and if the appropriations of 1917 must be for the period ending September 30, 1919, there is a period of three months during which a State department may use either of two appropriations. The Constitution need not be interpreted to require this, but the words of the Constitution do seem to require it, and such a scheme substantially renders impossible any business like handling of the State's finances.

The statements just made indicate some of the detailed problems which must be considered by a convention, if one is assembled. Other problems of a more general character will also present themselves. Reference has already been made to the plan of cumulative voting in this State for members of the House of Representatives, and to the reasons for the adoption of this plan in 1870. The question of continuing or departing from this plan will almost certainly be discussed by a convention, and the convention will have before it the possibility of continuing the present plan, of returning to a pure majority system, or of adopting a scheme which will be more distinctly proportional than the one now in force. The main purpose aimed at in 1870 by the adoption of cumulative voting, the abolition of purely sectional parties, has been accomplished. The merits of minority representation are

not appropriate for discussion here, but it is for a convention to submit to the people a change if it thinks one desirable.[12]

Some proposals of constitutional change contemplate the omission of provisions from the Constitution of 1870. For example, that document contains a number of provisions regarding State banks of issue. Since 1866 a heavy tax has been imposed by the United States upon State bank notes, and because of this, such notes have ceased to be issued. Probably there have been no State bank notes in circulation since the adoption of the Constitution of 1870. In view of this and of the fact that the policy of the United States in this respect is very unlikely to change, the provisions of the present Constitution regarding State banks of issue seem useless. The sections of the present Constitution relating to railroads were introduced at a time when the problem of regulating public utilities was substantially a new one, and in the opinion of at least one competent critic, such sections "in so far as they are not obsolete are unnecessary."[13]

When the General Assembly adopted the resolution for a popular vote upon the question of holding a constitutional convention, it was thought by many that one of the most seriously controversial problems likely to come before a convention was that relating to the liquor traffic. This problem may for the present, however, be said to be largely removed from the province of a State constitutional convention. The proposed prohibition amendment to the Constitution of the United States is subject to ratification by state Legislatures, and while the amendment is pending political contest with respect to the liquor problem will center in the General Assembly rather than in a constitutional convention.

It has already been suggested that each succeeding Constitution in Illinois has contained more detail than the instrument it replaced. Detailed regulations, suited to conditions which existed at the time they were made, cannot be permanent. To a large extent, the Convention of 1869–70 was necessary to meet conditions presented by the fact that the Constitution of 1848 provided inadequate salaries for State officers and an inadequate judicial system. The more numerous details of the Constitution of 1870 must change if conditions have changed, in just the same manner as changing conditions made it necessary to revise the detailed provisions of the Constitution of 1848. The contention that the Constitution of 1870 should not be changed because it is a document of fundamental and unchanging principles, ignores of course the very apparent fact that it is in large part made up of provisions not fundamental at all—provisions to govern in detail conditions which may change, and which have changed since 1870.

It may properly be urged, of course, that a Constitution should contain nothing but fundamental provisions, yet the whole development in the American states has been toward more detailed Constitutions and any Constitution adopted in Illinois in the near future is apt to contain a good deal of detail. This would be the case even though there be less detail in a new Constitution than in that now in force.

[12] For a discussion of this subject see Moore, Blaine F., The History of Cumulative Voting and Minority Representation in Illinois, 1870-1908 (University of Illinois Bulletin, Vol. 6, No. 23).
[13] Butler, Rush C., Proceedings of the Illinois State Bar Association, 1917, pp. 449, 463.

If detailed provisions are put into a Constitution, it must be possible to change them when conditions alter. It may be unwise to put details into a Constitution, but it is still more unwise to put details of a necessarily temporary character into a Constitution and at the same time to frame an amending clause upon the assumption that the Constitution is a body of fundamental and unchanging principles. The framers of the present Constitution realized the need of making the Constitution easier to change than it had previously been, and some of the difficulties in the present amending process could not have been foreseen in 1870. Perhaps, however, there is now general agreement that, either through a convention, or failing that, through legislative proposal, an easier process of changing the Constitution should be devised.[14]

In this bulletin a number of possible changes in the present Constitution have been discussed. These suggested changes fall into two groups: (1) Changes of a material character; (2) changes in matters not perhaps of fundamental interest, but yet of importance to the proper conduct of government. A convention may, of course, not regard it as desirable to consider all the problems here suggested. It should always be borne in mind also that the convention is but a recommending body. It is a body elected by the people for one specific purpose, but its actions have no validity unless approved by the people. There is no danger of a convention's destroying any of the rights and liberties of the people, for it has no power independently of the people themselves. Even if all the changes here discussed were proposed by a convention and approved by the people, they would leave the framework of the present government little altered, and the new Constitution would be substantially the one of 1870, changed in the respects thought necessary to meet new needs. So far as provisions of the present Constitution remained unchanged, nothing of judicial interpretation would be upset, and little disturbance of legal continuity would result from changes carefully made, with a knowledge of problems presented by present judicial constructions of the Constitution.

[14] See ante, pages 31-35, 79-81.

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